

In The Matter Of:

Jon Batts v. Remington Arms Company, LLC
USDC WDT, Waco Div.; Case No. WA:17-CV-00346-RP

Charles Wayne Powell
June 19, 2019



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IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
WACO DIVISION

JON BATTIS,)
Plaintiff,)
vs.) Case No. WA:17-CV-00346-RP
REMINGTON ARMS COMPANY,)
LLC,)
Defendant.)

* * * * *

VIDEOTAPED DEPOSITION OF CHARLES WAYNE POWELL
TAKEN ON BEHALF OF THE DEFENDANT
IN OKLAHOMA CITY, OKLAHOMA
ON JUNE 19, 2019

* * * * *

Reported By: Theresa A. White, CSR, RPR, RMR, CRR

* * * * *

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EXHIBIT 3

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14 Also Present:

15 Derek Watkins

16 Videographer:

17 Ken L. Young, CLVS

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STIPULATION

2 It is stipulated that the deposition of
3 CHARLES WAYNE POWELL may be taken pursuant to the
4 Federal Rules of Civil Procedure and pursuant to
5 Notice on June 19, 2019, beginning at 10:06 a.m.
6 before Theresa A. White, CSR, RPR, RMR, CRR.

* * * *

8 VIDEOGRAPHER: We're on the record at 10:06
9 on Wednesday, June 19th, 2019. This is the
10 videotaped deposition of Charles Powell in the matter
11 of Jon Batts versus Remington Arms Company, LLC,
12 filed in U.S. District Court for the Western District
13 of Texas, Waco Division. If the attorneys will state
14 their appearances, and the witness may be sworn.

15 MR. MEADOR: Robert Meador for the plaintiff
16 Jon Batts.

17 MR. DANEKAS: Steven Danekas on behalf of
18 Defendant Remington Arms.

19 MR. CHANEY: Mitchell Chaney for Remington.

20 CHARLES WAYNE POWELL,
21 having been duly sworn or affirmed, w
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. DANEKAS:

25 Q You are Charles Powell?

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<p style="text-align: right;">Page 5</p> <p>1 STIPULATION</p> <p>2 It is stipulated that the deposition of</p> <p>3 CHARLES WAYNE POWELL may be taken pursuant to the</p> <p>4 Federal Rules of Civil Procedure and pursuant to</p> <p>5 Notice on June 19, 2019, beginning at 10:06 a.m.</p> <p>6 before Theresa A. White, CSR, RPR, RMR, CRR.</p> <p>7 *****</p> <p>8 VIDEOGRAPHER: We're on the record at 10:06</p> <p>9 on Wednesday, June 19th, 2019. This is the</p> <p>10 videotaped deposition of Charles Powell in the matter</p> <p>11 of Jon Batts versus Remington Arms Company, LLC,</p> <p>12 filed in U.S. District Court for the Western District</p> <p>13 of Texas, Waco Division. If the attorneys will state</p> <p>14 their appearances, and the witness may be sworn.</p> <p>15 MR. MEADOR: Robert Meador for the plaintiff</p> <p>16 Jon Batts.</p> <p>17 MR. DANEKAS: Steven Danekas on behalf of</p> <p>18 Defendant Remington Arms.</p> <p>19 MR. CHANEY: Mitchell Chaney for Remington.</p> <p>20 CHARLES WAYNE POWELL,</p> <p>21 having been duly sworn or affirmed, was examined and</p> <p>22 testified as follows:</p> <p>23 DIRECT EXAMINATION</p> <p>24 BY MR. DANEKAS:</p> <p>25 Q You are Charles Powell?</p>	<p style="text-align: right;">Page 7</p> <p>1 propel the bullet out of the barrel?</p> <p>2 A Yes.</p> <p>3 Q And is it your opinion that there was</p> <p>4 insufficient force to propel the bullet out of the</p> <p>5 barrel because the force went rearward to propel the</p> <p>6 cartridge case out of the chamber?</p> <p>7 A Yes, it is.</p> <p>8 Q So is it your opinion that the barrel catch</p> <p>9 and the barrel lug began to disengage before the</p> <p>10 bullet left the cartridge case?</p> <p>11 A I don't know. I didn't determine where the</p> <p>12 bullet was when the disengagement between the latch</p> <p>13 and the barrel lug happened.</p> <p>14 Q What was the pressure created by the incident</p> <p>15 round?</p> <p>16 A Well, I didn't measure that either, but</p> <p>17 standard pressures would be less than 58,000 psi.</p> <p>18 Q For Subsonic 300 Blackout rounds?</p> <p>19 A Well, that's the SAAMI maximum for that</p> <p>20 cartridge. Depending on what the propellant was, it</p> <p>21 would be more or less than that. Well, not more than</p> <p>22 that, but certainly less. It could be less than</p> <p>23 that.</p> <p>24 Q Do you have an opinion as to the range of</p> <p>25 what the pressure was from the incident round?</p>
<p style="text-align: right;">Page 6</p> <p>1 A Yes, sir.</p> <p>2 Q Mr. Powell, in this case is it your opinion</p> <p>3 that Mr. Batts was using proper, factory-compliant</p> <p>4 ammunition at the time of the incident?</p> <p>5 A Yes.</p> <p>6 Q Is it your opinion that when Mr. Batts pulled</p> <p>7 the trigger on the incident round, that there was</p> <p>8 some engagement between the barrel catch and the</p> <p>9 barrel lug?</p> <p>10 A Yes.</p> <p>11 Q Is it your opinion that the force of the shot</p> <p>12 that Mr. Batts fired caused the barrel lug to</p> <p>13 disengage from the barrel catch?</p> <p>14 A Yes.</p> <p>15 Q Is it your opinion that the disengagement</p> <p>16 caused the action to open?</p> <p>17 A Yes.</p> <p>18 Q Is it your opinion that when the action</p> <p>19 opened far enough, there was still pressure in the</p> <p>20 bore sufficient to propel the cartridge case rearward</p> <p>21 with such energy that it pierced Mr. Batts' glasses</p> <p>22 and entered his eye?</p> <p>23 A Yes.</p> <p>24 Q Is it your opinion that the bullet lodged in</p> <p>25 the barrel because there was insufficient force to</p>	<p style="text-align: right;">Page 8</p> <p>1 A No. I haven't tested any of the incident</p> <p>2 rounds. In my testing with exemplar ammunition</p> <p>3 manufactured by Hornady, the same bullet and subsonic</p> <p>4 round pressures were around 30,000 psi.</p> <p>5 Q The pressures are different between subsonic</p> <p>6 and hypersonic rounds; is that correct?</p> <p>7 A I haven't measured the difference between the</p> <p>8 two, but it could be, yes.</p> <p>9 Q But it is your opinion that the disengagement</p> <p>10 between the barrel catch and the barrel latch</p> <p>11 occurred causing the action to open prior to -- or</p> <p>12 before the bullet had an opportunity to exit the</p> <p>13 barrel?</p> <p>14 A Yes.</p> <p>15 Q What is the range of pressures for a standard</p> <p>16 factory-compliant subsonic 300 Blackout round?</p> <p>17 A I've seen ranges on the industry literature</p> <p>18 between probably around 15,000 to 35,000 psi for</p> <p>19 subsonic.</p> <p>20 Q You used the term I think "factory</p> <p>21 pressures." How do you define factory pressures?</p> <p>22 A Those listed in factory handloading manuals.</p> <p>23 Q Have you replicated Mr. Batts' incident?</p> <p>24 A I have not.</p> <p>25 Q Have you tried?</p>

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<p>Page 9</p> <p>1 A No.</p> <p>2 Q Why not?</p> <p>3 A The physical evidence I think shows exactly</p> <p>4 what happened. I haven't felt the need to use an</p> <p>5 exemplar rifle to fire a dangerous condition that</p> <p>6 might result in someone's injury.</p> <p>7 Q Can you think of any way to attempt to</p> <p>8 replicate Mr. Batts' incident without endangering any</p> <p>9 participants?</p> <p>10 A Certainly you could devise a system and fire</p> <p>11 it remotely in an enclosed space so that it couldn't</p> <p>12 injure anyone, yes. I don't have access to that</p> <p>13 facility. It would have to be something that I would</p> <p>14 specifically either design or retain someone else to</p> <p>15 do.</p> <p>16 Q But in any event, in this case you did not do</p> <p>17 that?</p> <p>18 A That's correct.</p> <p>19 Q If you were to do that in an attempt to</p> <p>20 replicate Mr. Batts' incident, what would you do?</p> <p>21 How would you do it?</p> <p>22 A I haven't given it consideration, but it</p> <p>23 would be related to low engagement between the latch</p> <p>24 and barrel lug, as well as firing a standard</p> <p>25 cartridge, a standard subsonic 300 AAC Blackout</p>	<p>Page 11</p> <p>1 Q Okay. You then cleaned the bore with a bore</p> <p>2 snake and a patch; correct?</p> <p>3 A No, sir. After each series of three shots,</p> <p>4 after applying oil in the barrel, I cleaned the</p> <p>5 barrel, and I didn't use a bore snake but utilized</p> <p>6 just a cleaning rod and patches and a bronze brush.</p> <p>7 Q Okay. Then you poured -- then you placed</p> <p>8 more oil for a second series of firings; correct?</p> <p>9 A A second series of three shots. I would</p> <p>10 apply more oil the first time and then fire three</p> <p>11 shots and did that three times.</p> <p>12 Q Then after the second series of firing after</p> <p>13 applying oil, you again cleaned the bore?</p> <p>14 A Yes, sir.</p> <p>15 Q And then applied oil again and fired three</p> <p>16 more rounds?</p> <p>17 A Correct.</p> <p>18 Q Was the engagement of the exemplar rifle that</p> <p>19 you were using for the range-firing the same</p> <p>20 engagement for each of the 13 discharges?</p> <p>21 A Yes. As best I could tell, it remained the</p> <p>22 same during all of the discharges.</p> <p>23 Q And you were determining the amount of</p> <p>24 engagement between the barrel catch and the barrel</p> <p>25 lug by using an iPhone to record the engagement</p>
<p>Page 10</p> <p>1 A cartridge.</p> <p>2 Q I noticed, Mr. Powell, in some of the videos</p> <p>3 you produced to -- or that were produced to us</p> <p>4 yesterday, they were videos of your test-firing your</p> <p>5 exemplar in late May at a range; correct?</p> <p>6 A Yes.</p> <p>7 Q And I noticed that in some of those videos,</p> <p>8 sir, that you activated the trigger, it appeared,</p> <p>9 remotely by use of a string or a cord; is that</p> <p>10 correct?</p> <p>11 A Correct.</p> <p>12 Q Why did you do that?</p> <p>13 A Because I was firing the firearm in a</p> <p>14 non-standard method, by pouring oil down the barrel,</p> <p>15 as had been done by Mr. Batts, and I was unsure as to</p> <p>16 what would happen. So I used a string to activate</p> <p>17 the trigger and stood well away behind the screen.</p> <p>18 Q My understanding, and we'll get into this a</p> <p>19 little bit later, but my understanding is that your</p> <p>20 range firing involved 13 firings. The first four</p> <p>21 were without any oil in the chamber; correct?</p> <p>22 A Yes.</p> <p>23 Q The -- then you put oil in the chamber and</p> <p>24 fired three rounds?</p> <p>25 A Correct. Three different times basically.</p>	<p>Page 12</p> <p>1 between the barrel catch and the barrel lug through a</p> <p>2 hole you or someone else at your direction had</p> <p>3 created in the side of the rifle?</p> <p>4 A Correct. That model rifle has a viewport and</p> <p>5 it's just small. So I had had a machinist enlarge it</p> <p>6 so I could get a camera and enough light in to take</p> <p>7 pictures of it. So I recorded it in slow motion with</p> <p>8 the iPhone and then would visually look at it after</p> <p>9 each test to make sure it was still latched.</p> <p>10 Q I noticed in one of the photographs you</p> <p>11 produced to us, Mr. Powell, that at some point you</p> <p>12 measured the length of engagement on the barrel lug</p> <p>13 of the subject rifle.</p> <p>14 A Yes. That was done off the CAT scan.</p> <p>15 Q Have you ever measured the length of</p> <p>16 engagement as reflected by the wear pattern on your</p> <p>17 exemplar rifle?</p> <p>18 A I don't recall. I may have, but I certainly</p> <p>19 looked at the engagement directly through the side</p> <p>20 port.</p> <p>21 Q Okay. Is it your opinion that viewing the</p> <p>22 engagement between the barrel catch and the barrel</p> <p>23 lug through the side port can determine for you how</p> <p>24 much engagement there is between the barrel catch --</p> <p>25 the surface of the barrel catch and the barrel lug?</p>

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<p style="text-align: right;">Page 13</p> <p>1 A Sure. That's a direct observation, looking 2 through the viewport.</p> <p>3 Q Is the barrel lug a flat surface?</p> <p>4 A Basically, yes.</p> <p>5 Q Is the barrel -- the surface of the barrel 6 catch, which engages with the barrel lug, is that a 7 flat surface?</p> <p>8 A I don't recall offhand. It may be slightly 9 curved, but it's basically flat, yes.</p> <p>10 Q Do you consider this case to be one of a 11 failure of material?</p> <p>12 A No. I believe that the materials that were 13 utilized in the construction of the subject rifle 14 were adequate.</p> <p>15 Q Were?</p> <p>16 A Were adequate. I saw no -- no deviance of 17 those materials, nor did I test them for deviance 18 from the drawings, the engineered drawings from 19 Remington.</p> <p>20 Q Did you conduct a failure analysis in this 21 case?</p> <p>22 A Yes.</p> <p>23 Q Are there generally accepted procedures for 24 conducting a failure analysis?</p> <p>25 A There are different types of guidelines for</p>	<p style="text-align: right;">Page 15</p> <p>1 possibilities?</p> <p>2 A Correct.</p> <p>3 Q In this case, what possible scenarios did you 4 first consider as to what caused or could have caused 5 the incident?</p> <p>6 A I think initially we -- I spoke to Mr. Meador 7 and discussed the case with him and discussed that 8 there could have been a material defect or failure 9 inside the rifle. There could have been a 10 high-pressure round fired in the rifle. Those are 11 the first two things we discussed and determined that 12 we wanted to radiograph the rifle to see if -- what 13 we could see inside the rifle, and we saw that it was 14 not latching correctly.</p> <p>15 Q Okay. The second you said was a 16 high-pressure round. What was the first possibility 17 that you mentioned?</p> <p>18 A A material defect, a failure of one of the 19 components inside the rifle.</p> <p>20 Q Okay. And I think with regard to that first 21 possibility, a material defect, you ruled that out?</p> <p>22 A Well, we didn't see any broken parts inside 23 the rifle.</p> <p>24 Q And you told me a minute ago that you don't 25 believe that there is any failure of materials in</p>
<p style="text-align: right;">Page 14</p> <p>1 conducting failure analysis projects, depending on 2 the project.</p> <p>3 Q Did you follow any such guidelines in your 4 work in this case?</p> <p>5 A In general, yes.</p> <p>6 Q Which ones?</p> <p>7 A Well, I can't point to a specific one. I 8 haven't researched that; but in general, all my 9 failure-analysis projects involve the evaluation of 10 the failure, the determination of measurements, and 11 what particularly caused a failure, and then at times 12 evaluating how that failure occurred through testing 13 of exemplars.</p> <p>14 Q Where did you get the exemplar that you have 15 used in this case?</p> <p>16 A I purchased it used as a -- from an online 17 seller.</p> <p>18 Q When you first get involved in a case, 19 Mr. Powell, and you're getting up to speed on the 20 incident, do you consider the different types of 21 scenarios that could have caused the incident 22 involved in the case?</p> <p>23 A Yes.</p> <p>24 Q And then as you proceed through your 25 analysis, do you then eliminate some of those</p>	<p style="text-align: right;">Page 16</p> <p>1 this case?</p> <p>2 A That's correct.</p> <p>3 Q Okay. And did you also rule out the second 4 possibility that there was a high-pressure round in 5 the rifle at the time of the incident?</p> <p>6 A Yes.</p> <p>7 Q How did you do that?</p> <p>8 A Evaluation of the materials of the rifle. 9 Once we could disassemble it and look at it in CAT 10 scan, there were no parts that would have been 11 damaged by high pressure such as the plastic trigger 12 guard, some of the other components that are 13 stretched out when a high-pressure round is fired.</p> <p>14 Q If there had been a high-pressure round that 15 caused the engagement between the barrel catch and 16 the barrel lug to disengage, you would expect to see 17 damage to both of those surfaces; correct?</p> <p>18 A You would expect to see a lot of damage, yes.</p> <p>19 Q And you did not see a lot of damage on either 20 of those surfaces of this rifle; correct?</p> <p>21 A On any of the surface where you would expect 22 to see high-pressure damage.</p> <p>23 Q Did you see any damage that you believed to 24 have been caused as a result of the incident on the 25 surface of the barrel catch?</p>

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<p>1 A Well, just that it showed that it was not 2 engaging fully. There was no physical damage other 3 than the markings to show that it wasn't engaging 4 correctly.</p> <p>5 Q Specifically referring to the incident as 6 causing damage, did you see any damage on the barrel 7 catch that in your opinion was caused by the 8 incident?</p> <p>9 A It was difficult to tell if it was the 10 incident; but it was in previously-fired rounds, you 11 could see small particle compression and damage on 12 the barrel lug particularly. Not specifically the 13 catch but the barrel lug.</p> <p>14 Q Where on the barrel lug specifically?</p> <p>15 A Near -- near the end. That first 40 or 16 50/thousandths of engagement, you saw particles 17 mashed up and -- gosh, I don't know how better to 18 describe it, but something totally different than you 19 would during normal engagement.</p> <p>20 Q So are you saying that that was caused by the 21 incident?</p> <p>22 A It was caused by firing the rifle when the 23 engagement was not correct.</p> <p>24 Q What is your understanding of the number of 25 times this rifle had been fired?</p>	<p>1 A Measurement of the engagement on the CAT 2 scan, as well as evaluation of the damage on the 3 latch and the barrel lug.</p> <p>4 Q What -- we'll get back to that in a second.</p> <p>5 So after Mr. Batts closed the barrel, there 6 was some engagement between the barrel catch and the 7 barrel lug; correct?</p> <p>8 A I believe so, yes.</p> <p>9 Q He then cocked the hammer?</p> <p>10 A Correct.</p> <p>11 Q He then pulled the trigger; correct?</p> <p>12 A Yes, correct.</p> <p>13 Q That drove the firing pin into the primer; 14 correct?</p> <p>15 A Yes.</p> <p>16 Q The primer detonated?</p> <p>17 A Yes.</p> <p>18 Q Correct? The round then developed pressure 19 of approximately 30,000 psi?</p> <p>20 A Correct, based on my measurement of the 21 exemplar and evaluation of the components that the 22 ammunition was manufactured from.</p> <p>23 Q So the incident round in your opinion 24 developed a pressure of approximately 30,000 psi?</p> <p>25 A Correct. I obviously haven't measured it,</p>
Page 18	Page 20
<p>1 A As far as I know, three times.</p> <p>2 Q Is it your understanding that the rifle was 3 new on the day of the incident?</p> <p>4 A That's what Mr. Batts testified to, correct.</p> <p>5 Q So, Mr. Powell, if I understand the sequence 6 of events in your opinion, the incident cartridge -- 7 Mr. Batts inserted the incident cartridge into the 8 chamber; correct?</p> <p>9 A Yes.</p> <p>10 Q He then closed the barrel, and the barrel 11 catch and the barrel lug engaged?</p> <p>12 A Yes.</p> <p>13 Q Correct?</p> <p>14 A To a small extent.</p> <p>15 Q Do you have an opinion as to the extent of 16 the engagement at the time that Mr. Batts loaded the 17 incident round and closed the barrel?</p> <p>18 A I think based on my evaluation of the 19 markings on the barrel lug -- that's my supplemental 20 report -- I believe it was like 60/thousandths of an 21 inch.</p> <p>22 Yes, .0601 inches.</p> <p>23 Q And what's the basis for your opinion that 24 that was the extent of the engagement at the time of 25 the incident?</p>	<p>1 but I believe that's correct.</p> <p>2 Q And that's based on your testing of Hornady 3 factory rounds with your exemplar?</p> <p>4 A Correct.</p> <p>5 Q The bullet then began to go down the barrel; 6 correct?</p> <p>7 A Correct.</p> <p>8 Q At some point, the barrel catch and barrel 9 lug disengaged, and the action of the rifle began to 10 open; correct?</p> <p>11 A Correct.</p> <p>12 Q The pressure still in the bore caused the 13 brass to be ejected rearward into Mr. Batts; correct?</p> <p>14 A Yes.</p> <p>15 Q And when that happened, the pressure inside 16 the bore was no longer and the bullet could no longer 17 travel down the barrel; correct?</p> <p>18 A Correct.</p> <p>19 Q Do you agree that in a case in which you're 20 conducting a failure analysis, often a number of 21 factors frequently interrelated must be understood to 22 determine the cause of the failure?</p> <p>23 A Yes.</p> <p>24 Q Do you agree that the analyst must carefully 25 examine and evaluate all evidence available, then</p>

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<p>1 prepare a hypothesis of what could have caused the 2 incident?</p> <p>3 A In general, yes.</p> <p>4 Q What was your hypothesis of what could have 5 caused Mr. Batts' incident?</p> <p>6 A That the barrel was improperly latched as a 7 result of manufacture.</p> <p>8 Q Was that the only hypothesis that you 9 considered?</p> <p>10 A Well, we considered all possibilities until 11 the CAT scans were completed and the rifle was 12 disassembled and examined.</p> <p>13 Q When you say "all possibilities," you've 14 mentioned to me before a failure of parts? Breakage.</p> <p>15 A Correct.</p> <p>16 Q You mentioned to me an overpressured shell.</p> <p>17 A Correct.</p> <p>18 Q And then you've also mentioned the -- what 19 you believe to be insufficient engagement?</p> <p>20 A Of the latch, correct.</p> <p>21 Q Of the latch. Were those the only three 22 possibilities that you considered?</p> <p>23 A Yes.</p> <p>24 Q And when did you rule out the first 25 possibility? Namely, that some part had failed or</p>	<p>1 A Yes, after the evaluation of the CAT scan, 2 correct.</p> <p>3 Q And when did you rule out the second 4 possibility, that is, of an overpressured shell?</p> <p>5 A After the disassembly and examination at 6 North Star Imaging, as well as the CAT scan.</p> <p>7 Q Do you agree, Mr. Powell, that if the failure 8 can be duplicated under controlled, simulated service 9 conditions, much can be learned about how the failure 10 actually occurred?</p> <p>11 A The testing can help you evaluate how things 12 occurred, whether it's testing that shows a negative, 13 such as the testing I did, showing an improperly 14 latched rifle doesn't open, as well as testing if you 15 want to try to duplicate the dangerous condition of 16 Mr. Batts, it can also tell you something.</p> <p>17 Q Well, you would agree that if you can 18 replicate the incident, much can be learned about how 19 the failure actually occurred?</p> <p>20 A It can, yes.</p> <p>21 Q Mr. Powell, with regard to your opinion that 22 Mr. Batts was using proper factory-compliant 23 ammunition at the time of the incident, I take it 24 that that includes your opinion that he was using the 25 proper propellant?</p>

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1 broken?

2 **A When we could examine the internal components
3 first via x-ray and then via CAT scan.**

4 Q My understanding from your file, Mr. Powell,
5 that in December of 2016, you had the subject rifle,
6 Mr. Batts' rifle, and your exemplar rifle x-rayed; is
7 that correct?

8 **A Yes.**

9 Q You then with Mr. Watkins, our expert, at
10 North Star Laboratories in Minnesota in November of
11 '17 had the subject rifle, Mr. Batts' rifle,
12 CAT-scanned; correct?

13 **A Correct.**

14 Q Did you rule out the first possibility that
15 the -- that there was a failure of material or broken
16 material after you x-rayed the subject rifle in
17 December of '16?

18 **A No. The x-rays are not sufficiently accurate
19 in order to determine the -- all of the different
20 components inside the rifle. You could just see the
21 improper engagement.**

22 Q At the time of the CAT scan in November of
23 2017, did you then rule out the first possibility?
24 Namely, that there could have been a breakage or
25 failure of parts?

1 **A As far as I know, he was using a ball
2 propellant of the appropriate amount within this
3 cartridge case. And by factory -- by "industry
4 compliant," I think what I would prefer to say is
5 that his cartridge loads would have met the
6 requirements from SAAMI for that particular
7 ammunition.**

8 Q Uh-huh. How did you determine that Mr. Batts
9 was using an incident round that had the proper
10 propellant?

11 **A From looking at the ammunition, which was
12 CAT-scanned and later disassembled.**

13 Q Okay. Was the ammunition actually
14 CAT-scanned or just x-rayed?

15 **A Well, it was done in the CAT scan. It's
16 often called a digital radiograph, but it's a much
17 higher resolution because it's done with a microfocus
18 x-ray. So you can actually see the propellant within
19 the shell.**

20 Q Now, the round that was broken down, that was
21 done when Mr. Watkins saw you on March 26th of this
22 year, 2019; correct?

23 **A Correct.**

24 Q When did you come to the conclusion that the
25 propellant in the incident round was the correct

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<p>Page 25</p> <p>1 propellant?</p> <p>2 A When I initially saw the rounds in their</p> <p>3 CAT-scan or DR evaluation.</p> <p>4 Q After Mr. Batts -- strike that. After</p> <p>5 Mr. Watkins tore down one of the rounds that was</p> <p>6 provided to you through Mr. Meador, did you do any</p> <p>7 type of research to determine what type of propellant</p> <p>8 was in that round?</p> <p>9 A I looked through the types of propellant</p> <p>10 literature and photographs that I had, and I could</p> <p>11 not identify that particular propellant. It's</p> <p>12 similar to an Accurate 1681, a small-ball propellant.</p> <p>13 It is very similar to propellants that are used in</p> <p>14 ammunition; but its exact nomenclature or</p> <p>15 terminology, I couldn't determine.</p> <p>16 Q And Mr. Watkins tore down a round. Just so</p> <p>17 the record is clear, it was one of the rounds that</p> <p>18 was provided to you by Mr. Meador and with the</p> <p>19 representation that it was one of the rounds that</p> <p>20 Mr. Batts had with him on the day of the incident;</p> <p>21 correct?</p> <p>22 A That's correct.</p> <p>23 Q So we are taking -- we're assuming that</p> <p>24 Mr. Batts is being accurate and truthful about that</p> <p>25 round -- those rounds being with him on the day of</p>	<p>Page 27</p> <p>1 at North Star in November of 2017 taken of the</p> <p>2 rounds, did you conduct any independent research</p> <p>3 about the propellant that you believed to have been</p> <p>4 in those rounds?</p> <p>5 A No, not other than simply looking once he had</p> <p>6 broken it open to see if I could identify it. I</p> <p>7 could only identify in the digital radiographs that</p> <p>8 it was a small-ball propellant, I think as I indicate</p> <p>9 in my report.</p> <p>10 Q So at the time the digital radiographs were</p> <p>11 done in November of 2017, did you then conclude at</p> <p>12 that time that the propellant in those rounds was the</p> <p>13 proper propellant for those rounds?</p> <p>14 A Yes. In my opinion, it appeared to be the</p> <p>15 proper propellant for those rounds.</p> <p>16 Q Is it your opinion that the incident</p> <p>17 cartridge, the incident round, produced enough</p> <p>18 pressure to propel the bullet out of the barrel if</p> <p>19 the engagement had been greater than what you believe</p> <p>20 it to have been?</p> <p>21 A If the engagement had kept the breech closed</p> <p>22 on the rifle, it would have propelled the bullet out</p> <p>23 of the bore, yes.</p> <p>24 Q Did you determine, Mr. Powell, that the</p> <p>25 incident round, the cartridge case and the bullet</p>
<p>Page 26</p> <p>1 the incident; correct?</p> <p>2 A Yes. I don't know anything other than what</p> <p>3 Mr. Batts tells me.</p> <p>4 Q Okay. Have you spoken to Mr. Batts at all in</p> <p>5 connection with this case?</p> <p>6 A I may have spoken to him early on. I don't</p> <p>7 specifically recall talking to him, but I certainly</p> <p>8 haven't talked to him in a year or so.</p> <p>9 Q All right. Do you have any recollection of</p> <p>10 any conversation with Mr. Batts?</p> <p>11 A No. I'm sure the only conversation I would</p> <p>12 have had with him is how he obtained the rifle and</p> <p>13 the ammunition and what -- if he did anything else</p> <p>14 when he fired it. And of course he's been deposed</p> <p>15 since then, and he didn't tell me anything different</p> <p>16 than what he said in his deposition.</p> <p>17 Q So you did in fact speak with Mr. Batts?</p> <p>18 A I don't -- I don't recall specifically</p> <p>19 speaking with him. All I can remember is I may have.</p> <p>20 I speak to a lot of different people over the years.</p> <p>21 Q Other than conversations you've had with</p> <p>22 Mr. Meador, have you spoken with anyone else about</p> <p>23 this case?</p> <p>24 A No, sir.</p> <p>25 Q After the high-resolution digital radiograph</p>	<p>Page 28</p> <p>1 attached to it, were -- was of proper dimension?</p> <p>2 A Well, I've never seen the cartridge case.</p> <p>3 The bullet appeared to be of proper dimensions, yes.</p> <p>4 Q Having not seen the proper -- excuse me.</p> <p>5 Having not seen the incident cartridge case, do you</p> <p>6 have an opinion whether that cartridge case was of</p> <p>7 proper dimension?</p> <p>8 A When he chambered it, it seemed to go into</p> <p>9 the chamber appropriately. So it would appear to</p> <p>10 have been the correct dimensions.</p> <p>11 Q And that's based on the video that you</p> <p>12 reviewed?</p> <p>13 A Correct.</p> <p>14 Q Anything else?</p> <p>15 A No.</p> <p>16 Q Would you have liked to have seen the</p> <p>17 incident cartridge case?</p> <p>18 A Yes.</p> <p>19 Q Why?</p> <p>20 A Because there are many things you can tell</p> <p>21 from an incident cartridge case.</p> <p>22 Q Such as what?</p> <p>23 A Dimensions, the pressure that it's been</p> <p>24 exposed to, the different kinds of -- well, not</p> <p>25 machining, but certainly handling and production</p>

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<p>1 characteristics used to load the shell and to seat 2 the bullet in the case, as well as the type of primer 3 used.</p> <p>4 Q In your opinion, was the incident round 5 equivalent to the factory ammunition such as you used 6 in your range-testing?</p> <p>7 A I believe so. That's why -- that's why I 8 used that factory ammunition.</p> <p>9 Q Do you believe that Mr. Batts was using 10 factory ammunition?</p> <p>11 A No. He was using ammunition that had been 12 remanufactured.</p> <p>13 Q Reloaded?</p> <p>14 A Well, reloaded, handloaded, remanufactured, 15 yes. The cases were not headstamped by a particular 16 manufacturer. They appeared to be once-fired cases.</p> <p>17 Q Do you have the pink or red box of ammunition 18 there?</p> <p>19 A Yes, sir. Right here.</p> <p>20 Q We don't need to -- can you take it out of 21 the bag, Mr. Powell?</p> <p>22 A Certainly.</p> <p>23 Q And that has an exhibit sticker on it. Can 24 you tell us what the exhibit sticker is?</p> <p>25 A Yes. The exhibit sticker is Number 24.</p>	<p>1 are there for the six polymer-tip rounds in that box? 2 Or for that matter, we'll go back to how it was 3 presented to initially. That is, there were seven 4 polymer-tip rounds. How many different cartridge 5 cases were there?</p> <p>6 A Three. Three different headstamped labels.</p> <p>7 Q For just the polymer-tip rounds?</p> <p>8 A Yes.</p> <p>9 Q And what were those three, sir?</p> <p>10 A WCC 11, WCC 10 and LC 04.</p> <p>11 Q And those cartridge cases would have all been 12 reformed or reshaped for purposes of a round of 300 13 Blackout ammunition; correct?</p> <p>14 A Correct.</p> <p>15 Q One of the rounds that you measured, if I am 16 reading your report correctly, seem to be longer than 17 what the specifications called for; is that correct?</p> <p>18 A Yes.</p> <p>19 Q And which round was that? Do you know?</p> <p>20 A The LC 04.</p> <p>21 Q Did you ever place that round into your 22 exemplar to determine if it would fit into the 23 chamber?</p> <p>24 A I did not.</p> <p>25 Q Did you -- did you ever place it in your</p>
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<p>1 Q And for the record, that was marked at 2 Mr. Batts' deposition as Exhibit 24, and that appears 3 to be a red plastic or pink -- I don't know what 4 color you want to use. I'll call it red -- plastic 5 ammo box with now eight rounds of ammunition; 6 correct?</p> <p>7 A Correct.</p> <p>8 Q When it was first provided to you, was -- 9 there was one extra round in there; correct?</p> <p>10 A Yes.</p> <p>11 Q And in March of this year, that was the round 12 that Mr. Watkins tore down with you being present; 13 correct?</p> <p>14 A Correct.</p> <p>15 Q And you have maintained the components of 16 that round, namely the cartridge case, the bullets 17 and the propellant; correct?</p> <p>18 A Yes. You mean after he disassembled them?</p> <p>19 Q Yes.</p> <p>20 A Yes.</p> <p>21 Q Yes, sir. So what we have today is we have 22 six polymer-tip rounds and then two -- are those 23 hollow-points?</p> <p>24 A Yes.</p> <p>25 Q How many different types of cartridge cases</p>	<p>1 exemplar at all for any reason?</p> <p>2 A No, I've not placed any of those in my 3 exemplar.</p> <p>4 Q Would you agree, then, that the polymer-tip 5 rounds that were provided to you were rounds that had 6 been remanufactured or reloaded by somebody?</p> <p>7 A Yes.</p> <p>8 Q And you understand that Mr. Batts claims that 9 he acquired or purchased these rounds from a gun show 10 in Fort Worth, I believe?</p> <p>11 A I think that's correct.</p> <p>12 Q Have you personally done any research to try 13 to determine who that seller was?</p> <p>14 A No.</p> <p>15 Q Have you inquired of anybody to try to 16 determine who that seller was?</p> <p>17 A I have not.</p> <p>18 Q You said that the propellant in the 19 polymer-tip rounds was a small-ball propellant?</p> <p>20 A Correct.</p> <p>21 Q And how did you confirm that to be the case?</p> <p>22 A Well, you could see it on the CAT scan; and 23 then when Mr. Watkins opened up the round, you could 24 see it visually.</p> <p>25 Q At the time of the digital radiography at</p>

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<p style="text-align: right;">Page 33</p> <p>1 North Star in November 2017 taken of the rounds, was 2 it at that time that you confirmed in your own mind 3 that the propellant in these polymer rounds was the 4 proper propellant?</p> <p>5 A Yes. It appeared to be exactly what I 6 expected to see. That's a small-ball propellant 7 filled up near the base of the bullet.</p> <p>8 Q And therefore, do you also confirm that the 9 amount of propellant in these rounds was the 10 appropriate amount?</p> <p>11 A Yes.</p> <p>12 Q Did -- we now know, with the video that was 13 provided to you a couple months ago, that Mr. Batts 14 fired a first round and the bullet stuck at the -- in 15 the barrel halfway -- roughly halfway up the muzzle; 16 correct?</p> <p>17 A Correct.</p> <p>18 Q What caused that?</p> <p>19 A A squib load. An underpressure load.</p> <p>20 Q What caused the underpressure?</p> <p>21 A I don't know. Insufficient or contaminated 22 propellant or absence of propellant.</p> <p>23 Q Did you rule out that the incident round was 24 either contaminated or insufficient?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 35</p> <p>1 Q Can propellants that appear to have the same 2 shape develop different pressures?</p> <p>3 A Yes.</p> <p>4 Q Do you reload?</p> <p>5 A Yes, I have.</p> <p>6 Q Do you -- what calibers do you handload?</p> <p>7 A Primarily 223 and 30-aught-6.</p> <p>8 Q When you handload, is it important to match 9 the propellant with the bullet that you are using?</p> <p>10 A Well, you usually have a different -- a 11 selection of different propellants that you can use, 12 and I try to select a propellant that will largely 13 fill the case when I select a propellant to start 14 using.</p> <p>15 Q How do you -- how do you determine what the 16 -- what the correct propellant is for a particular 17 bullet?</p> <p>18 A You look in reloading manuals provided by 19 propellant and bullet manufacturers, to start.</p> <p>20 Q Is it important to use the correct propellant 21 with a particular bullet?</p> <p>22 A Well, there is a number of correct 23 propellants that you can use.</p> <p>24 Q Okay.</p> <p>25 A But yes, it's important to use the correct</p>
<p style="text-align: right;">Page 34</p> <p>1 Q How?</p> <p>2 A Because of the amount of pressure it 3 produced.</p> <p>4 Q How much pressure was produced by the 5 incident round?</p> <p>6 A I don't know. I wasn't there to measure it. 7 I don't know how much exactly, but a considerable 8 amount, as you saw from the actions of the rifle, its 9 recoil and the ejection of the case into Mr. Batts' 10 eye.</p> <p>11 Q In your opinion was the engagement between 12 the barrel catch and the barrel lug on Mr. Batts' 13 rifle the same on the first round he fired, where he 14 got the squib round -- or excuse me -- he experienced 15 the squib load and the incident round? Do you follow 16 my question?</p> <p>17 A Yeah, could you ask the question again, 18 please?</p> <p>19 Q Yeah, I will. Is it your opinion that the 20 engagement between the barrel catch and the barrel 21 lug was the same on Round Number 1, the squib load, 22 as it was on the incident -- at the time of the 23 incident round?</p> <p>24 A I didn't measure it, but it would have been 25 very -- something very similar, yes. Low engagement.</p>	<p style="text-align: right;">Page 36</p> <p>1 amount of propellant for a particular bullet size and 2 shape.</p> <p>3 Q For a particular bullet, you often have a 4 choice of propellants; correct?</p> <p>5 A Correct.</p> <p>6 Q But there are also, for particular bullets, 7 propellants that you should not use?</p> <p>8 A Correct.</p> <p>9 Q Why?</p> <p>10 A Some propellants have different burning 11 characteristics, and those burning characteristics 12 may make a bullet inaccurate or cause excessively 13 high pressures to result in a barrel rupture.</p> <p>14 Q Not only do the pressures differ, but it also 15 differs over time; correct?</p> <p>16 A Yes. The burning characteristics as far as 17 when the peak pressure is developed and over what 18 length of time, that's correct.</p> <p>19 Q There is a time-pressure curve?</p> <p>20 A Yes.</p> <p>21 Q And it can, if you -- if one is using the 22 incorrect propellant for a particular bullet, create 23 a squib load?</p> <p>24 A Generally speaking, in my ex -- in my 25 experience, squib loads are created by either</p>

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<p style="text-align: right;">Page 37</p> <p>1 contaminated propellant or virtually using not enough 2 propellant. I've never seen a squib load created by 3 using the proper amount of an incorrect propellant. 4 Q And you have ruled out the incident round 5 having contaminated powder, or propellant, or the 6 incorrect amount because of the video showing the 7 force that the cartridge case was ejected rearward 8 with?</p> <p>9 A Well, you see the rifle interaction. You see 10 it recoil. You see it -- the pressure of the breech 11 -- you see the rifle breech opening and the pressure 12 pushing the cartridge out at high velocity. So it 13 appears to be a normally fired cartridge of a rifle 14 that's not latched correctly.</p> <p>15 Q Because as we --</p> <p>16 A In my opinion.</p> <p>17 Q As we covered earlier, your opinion is that 18 the incident bullet stuck in the barrel because the 19 pressure had been released rearward through the 20 chamber when the action opened?</p> <p>21 A Right.</p> <p>22 Q You have ruled out that -- if I understand 23 your sequence of events correctly, you have ruled out 24 that the bullet stuck in the barrel first, which in 25 turn created a rearward amount of pressure back</p>	<p style="text-align: right;">Page 39</p> <p>1 incident bullet, stuck in the barrel because of the 2 use of incorrect propellant; correct?</p> <p>3 A Correct.</p> <p>4 Q What testing have you done to rule out those 5 possibilities?</p> <p>6 A Examination of the bullet with a CAT scan, as 7 well as measurement and examination of the bullet 8 once it was removed from the bore.</p> <p>9 Q And what about the CAT scan of the bullet -- 10 let me back up for a second. Was the bullet that was 11 lodged in the barrel CAT-scanned or was that digital 12 radiography of the --</p> <p>13 A Well, I guess I refer to it as a CAT scan. 14 It's done with the same piece of equipment, but it's 15 just captured in a 2D form. So if you want to call 16 that a digital radiograph, you can, or DR. But it's 17 done with a microfocus x-ray so that you can zoom in, 18 zoom out, make measurements off of it.</p> <p>19 Q And what about the bullet after it was 20 removed from the barrel? What significance was that?</p> <p>21 A You could measure it, determine that it was 22 the correct caliber of bullet that was made out of 23 the correct components and that it should have not 24 been lodged in the bore as a result of some kind of a 25 bore obstruction.</p>
<p style="text-align: right;">Page 38</p> <p>1 toward the cartridge case; correct?</p> <p>2 A I have ruled out the bullet, some -- some 3 obstruction in the barrel stopping the bullet? Is 4 that what you're asking? I don't -- yes, I've ruled 5 that out. There is no evidence of anything in the 6 barrel --</p> <p>7 Q Let me --</p> <p>8 A -- that caused the bullet to stop and create 9 excessive pressure like a barrel -- bore obstruction, 10 for example.</p> <p>11 Q Let me rephrase it. We agree that the 12 incident bullet stuck in the barrel; correct?</p> <p>13 A Yes.</p> <p>14 Q It is your opinion that it stuck in the 15 barrel because the force created by the round exited 16 rearward through the chamber and propelled the 17 cartridge rearward -- the cartridge case rearward; 18 correct?</p> <p>19 A Correct.</p> <p>20 Q You have ruled out, then, that the incident 21 round, the incident bullet, stuck in the barrel 22 because of contaminated propellant or insufficient 23 propellant; correct?</p> <p>24 A Correct.</p> <p>25 Q You have ruled out that the bullet, the</p>	<p style="text-align: right;">Page 40</p> <p>1 Q I'm not talking bore obstruction, Mr. Powell. 2 I'm talking about the use of incorrect or 3 insufficient amount or contaminated propellant.</p> <p>4 A Well, then it would --</p> <p>5 Q You -- my understanding is that you have 6 ruled out the possibility of contaminated propellant, 7 incorrect propellant or insufficient amount of 8 propellant as causing the bullet to stick in the 9 barrel. Am I correct on that?</p> <p>10 A Right, because those are the conditions that 11 would have resulted in a low-pressure discharge that 12 we might -- that we're calling the squib, and we 13 didn't see that in the video.</p> <p>14 We have a video of the actual cartridge 15 firing. You see the rifle recoiling and the latch 16 unlatching with high pressure. So it was not 17 contaminated propellant nor the wrong propellant. It 18 appeared to be a normal-fired bullet that the 19 inappropriately latched barrel opened during the 20 firing of the cartridge.</p> <p>21 Q And that is based on your viewing of the 22 video of the incident?</p> <p>23 A Yes.</p> <p>24 Q Okay. My question is: What tests, if any, 25 have you conducted to rule out any propellant</p>

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<p style="text-align: right;">Page 41</p> <p>1 abnormality, whether it be contaminated, incorrect 2 type or insufficient amount, as causing the bullet to 3 lodge in the barrel?</p> <p>4 A The evaluation of the bullet to see what 5 would have caused it to lodge in the barrel, and it 6 appeared to be a normally fired bullet under normal 7 pressure because of the interaction between the rifle 8 and the cartridge case.</p> <p>9 So that testing as a result of the 10 examination of the CAT scans, as well as the 11 examination of the bullet; and from that evidence, 12 you can infer that there wasn't a -- it wasn't a 13 squib load. It wasn't contaminated propellant. It 14 was a normally fired high-pressure cartridge.</p> <p>15 Q So the video and the examination of the 16 bullets and the radiography, those are the things 17 that form your basis?</p> <p>18 A Yes.</p> <p>19 Q Form the basis for your opinion that this was 20 not a squib load?</p> <p>21 A Correct.</p> <p>22 Q Beyond that, though, you have not conducted 23 any tests to rule out that possibility, have you?</p> <p>24 A Well, it wasn't necessary to. It's obvious 25 that it wasn't contaminated propellant or</p>	<p style="text-align: right;">Page 43</p> <p>1 Q Is it possible to create a squib load by 2 using an improper propellant?</p> <p>3 A Of -- you mean thinking you're going to load 4 10 grains of a particular propellant and you load 10 5 grains of the wrong propellant? I don't think so. 6 Normally most propellants in that range are going to 7 develop enough pressure to push the bullet out the 8 barrel.</p> <p>9 Q So is it your opinion that if one uses the 10 improper propellant for a bullet, that the bullet 11 will never lodge or get stuck in the barrel?</p> <p>12 A Well, not anything -- not any that I'm aware 13 of. There may be some very slow-burning propellants 14 that perhaps this primer won't ignite, and you might 15 get a squib load like that, but then you would leave 16 a lot of unburned propellant in the firearm. I 17 didn't see any of that.</p> <p>18 Q Are you familiar with Accurate propellant?</p> <p>19 A In general, yes.</p> <p>20 Q Are you familiar with Accurate 2230 or 2520?</p> <p>21 A No.</p> <p>22 Q Do you consider examination of the bullet in 23 the bore, just an examination of those items, tests?</p> <p>24 A Sure. It's a visual inspection and 25 measurement.</p>
<p style="text-align: right;">Page 42</p> <p>1 low-pressure propellant or high pressure, for that 2 matter.</p> <p>3 Q Based on the video, showing the --</p> <p>4 A Correct.</p> <p>5 Q -- round being fired and then based upon the 6 appearance of the bullet?</p> <p>7 A The appearance of the bullet, the examination 8 of the bore in CAT scan, yes.</p> <p>9 Q You're sure about that?</p> <p>10 A I am.</p> <p>11 Q Have you determined specifically, Mr. Powell, 12 what the proper propellant was or is for a 300 13 Blackout round subsonic?</p> <p>14 A There are a variety of them.</p> <p>15 Q Name some of them for me, please.</p> <p>16 A Accurate 1681 would be one that I'm familiar 17 with.</p> <p>18 Q Have you identified -- through the 19 radiography and the examination of the propellant 20 removed from the round that Mr. Watkins tore down, 21 have you identified or narrowed down to any -- a 22 small list of possibilities of what exactly that 23 powder was -- or propellant was?</p> <p>24 A I think I answered that question earlier. I 25 have not identified that specific powder.</p>	<p style="text-align: right;">Page 44</p> <p>1 Q So in your view, a test would include an 2 examination, visual inspection of a piece of 3 evidence?</p> <p>4 A Visual examination is certainly a type of 5 nondestructive testing, as well as measurement, as 6 well as evaluation of x-rays and CAT scans. All of 7 those are tests.</p> <p>8 Q Would propellant for a 308 caliber rifle be a 9 correct propellant or proper propellant to use for a 10 300 Blackout bullet at 208 grains?</p> <p>11 A I wouldn't think so, no.</p> <p>12 Q Why not?</p> <p>13 A I think it may -- generally 308 propellants 14 are slower because it's a much -- much larger 15 capacity case.</p> <p>16 Q About three times the capacity, is it not?</p> <p>17 A I haven't measured it, but they are much 18 larger.</p> <p>19 Q If one had used a 308 propellant, a slower 20 burning propellant such as you have described, in a 21 smaller cartridge case such as a 300 Blackout 22 cartridge case, what would you expect to happen?</p> <p>23 A I don't know. It depends whether or not it 24 would be ignited by the standard primer in that case.</p> <p>25 Q Would you agree that propellant for a 300</p>

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<p>1 Blackout cartridge case needs to be a faster burning 2 propellant than that used for a 308? 3 A I would think so, yes. 4 Q Would you agree that a propellant intended 5 for a 308 cartridge case using a 300 Blackout round 6 could cause a squib load? 7 A I don't know. I haven't tested that. 8 Q Okay. When tests are run, are you generally 9 looking at a test to -- whatever you're testing, 10 you're looking at something that's either going to 11 fail or pass that test? 12 A Not necessarily. 13 Q Why would you run a test, then? 14 A Because you're seeking data. You don't have 15 to have a pass/fail value on that data. You can 16 conduct a test to see what a particular test result 17 produces. 18 Q How did you determine that the barrel catch 19 was engaged with the barrel lug when Mr. Batts pulled 20 the trigger on the incident round? 21 A Examination and measurement of the damage on 22 the lug itself. On the lug and the latch, the latch 23 surface. 24 Q We talked about this a little bit earlier; 25 but with regard to the damage to which you refer,</p>	<p>1 barrel lug to disengage from the barrel catch? 2 A No. 3 Q What was the force? 4 A I don't know. 5 Q Over what period of time was it applied? 6 A During the period of time that the shell 7 discharged. 8 Q What was that? 9 A I haven't measured it off of the video. A 10 very short period of time. Milliseconds. 11 Q Do you know how long in a 300 Blackout -- 12 200-grain, 300 Blackout round takes to exit a 16-inch 13 barrel under normal circumstances? 14 A No. 15 Q Do you have an estimate? 16 A Several -- several milliseconds. 17 Q What's the range? 18 A I -- I don't know. 19 Q More than three? 20 A Probably more than three. Less than 10. 21 Q Is that the best estimate you can give? More 22 than three, less than 10 milliseconds? 23 A Yes, and that's an estimate. 24 Q When this incident happened, was there any 25 actuation of the barrel release?</p>
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<p>1 where on the barrel lug is that damage? 2 A It's towards the tip end of that lug. 3 Q What I would call the edge? Does that make 4 sense to you? 5 A Well, it's not on the corner edge, but it's 6 on the rear portion of the upper surface of the lug. 7 Q Okay. We'll look at some pictures in a 8 little bit. 9 Other than the -- what you've described here 10 as damage on the lug and the catch surface, the 11 barrel catch surface, is there any other basis for 12 your conclusion that the barrel catch was engaged 13 with the barrel lug when Mr. Batts pulled the trigger 14 on the incident round? 15 A No. You just see the physical evaluation of 16 those two surfaces. 17 Q Okay. How did you determine that the force 18 of the shot caused the barrel lug to disengage from 19 the barrel catch? 20 A Because you see the damaged and 21 microscopically disturbed material at that edge 22 created by the last shot that that rifle fired. 23 Q Other than that damage that you just 24 mentioned, is there any other basis for your 25 conclusion that the force of the shot caused the</p>	<p>1 A There was no actuation by Mr. Batts of the 2 barrel release, if that's what you're asking, nor did 3 I see any forces that would have released the barrel 4 absent the pressure from the cartridge. 5 In other words, there was no inertial force 6 of the rifle movement that would have caused the 7 barrel release -- the barrel release to depress 8 itself, for example. 9 Q So in your opinion, the depression -- there 10 was no depression of the barrel release that caused 11 the barrel catch and barrel lug to disengage; 12 correct? 13 A Correct. 14 Q Did the disengagement cause the release to 15 move? 16 A I don't know. 17 Q Do you have an opinion regarding the velocity 18 of the cartridge case when it left the chamber? 19 A No. I haven't calculated that. 20 Q And I believe you said the length of 21 engagement at the time of this incident was roughly 22 60/thousandths of an inch? 23 A Yes. 24 Q And that's based on what again? 25 A The smeared and damaged material on the</p>
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<p>1 where on the barrel lug is that damage? 2 A It's towards the tip end of that lug. 3 Q What I would call the edge? Does that make 4 sense to you? 5 A Well, it's not on the corner edge, but it's 6 on the rear portion of the upper surface of the lug. 7 QOkay. We'll look at some pictures in a 8 little bit. 9 Other than the -- what you've described here 10 as damage on the lug and the catch surface, the 11 barrel catch surface, is there any other basis for 12 your conclusion that the barrel catch was engaged 13 with the barrel lug when Mr. Batts pulled the trigger 14 on the incident round? 15 A No. You just see the physical evaluation of 16 those two surfaces. 17 QOkay. How did you determine that the force 18 of the shot caused the barrel lug to disengage from 19 the barrel catch? 20 A Because you see the damaged and 21 microscopically disturbed material at that edge 22 created by the last shot that that rifle fired. 23 QOther than that damage that you just 24 mentioned, is there any other basis for your 25 conclusion that the force of the shot caused the</p>	<p>1 A There was no actuation by Mr. Batts of the 2 barrel release, if that's what you're asking, nor did 3 I see any forces that would have released the barrel 4 absent the pressure from the cartridge. 5 In other words, there was no inertial force 6 of the rifle movement that would have caused the 7 barrel release -- the barrel release to depress 8 itself, for example. 9 QSo in your opinion, the depression -- there 10 was no depression of the barrel release that caused 11 the barrel catch and barrel lug to disengage; 12 correct? 13 A Correct. 14 QDid the disengagement cause the release to 15 move? 16 A I don't know. 17 QDo you have an opinion regarding the velocity 18 of the cartridge case when it left the chamber? 19 A No. I haven't calculated that. 20 QAnd I believe you said the length of 21 engagement at the time of this incident was roughly 22 60/thousandths of an inch? 23 A Yes. 24 QAnd that's based on what again? 25 A The smeared and damaged material on the</p>

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<p>1 barrel catch and the barrel lug.</p> <p>2 Q How much force was required to open the</p> <p>3 action with that much engagement?</p> <p>4 A I don't know. I haven't measured that.</p> <p>5 Q If you -- what was the engagement in your</p> <p>6 opinion of the exemplar rifle that you have?</p> <p>7 A I believe over double the 60/thousandths. So</p> <p>8 let's see what value I got.</p> <p>9 It was measured to be .145 inches.</p> <p>10 Q Say that again. I'm sorry, Mr. Powell.</p> <p>11 A .145 inches.</p> <p>12 Q And that's based on the CT scan? Or I'm</p> <p>13 sorry. That's based on the radiography of the</p> <p>14 exemplar?</p> <p>15 A No. That's based on measuring the engagement</p> <p>16 through the view hole.</p> <p>17 Q When you say measuring the engagement through</p> <p>18 the viewing hole, how did you do that?</p> <p>19 A With a microscope, measuring microscope.</p> <p>20 Q And so if I understand it correctly, .145</p> <p>21 inches. So the barrel catch was .145 inches over the</p> <p>22 barrel lug?</p> <p>23 A Correct.</p> <p>24 Q So the front edge of the barrel lug was</p> <p>25 contacting the barrel catch?</p>	<p>1 agree with that?</p> <p>2 A Yes.</p> <p>3 MR. DANEKAS: Mr. Chaney would like to take a</p> <p>4 short break so we'll take about a five-minute break.</p> <p>5 VIDEOGRAPHER: Off the record at 11:15.</p> <p>6 (Recess held)</p> <p>7 VIDEOGRAPHER: We're back on the record at</p> <p>8 11:29.</p> <p>9 Q (By Mr. Danekas) Mr. Powell, do -- are you</p> <p>10 aware of any literature in the engineering field that</p> <p>11 describes or defines testing as a visual examination</p> <p>12 and measurement?</p> <p>13 A I'm sure that the -- there are standards for</p> <p>14 visual testing, visual testing of components for</p> <p>15 determining different types of characteristics.</p> <p>16 Q When you refer to the phrase "visual</p> <p>17 testing," that means somebody such as yourself, an</p> <p>18 engineer, is visually looking at a -- in this case,</p> <p>19 parts of a rifle?</p> <p>20 A Yes, with a knowledgeable eye looking for</p> <p>21 deformations, fractures, characteristics that would</p> <p>22 help explain a particular condition, yes.</p> <p>23 Q But I'm having a difficult time grasping the</p> <p>24 concept of that visual examination of a piece of</p> <p>25 evidence is actual testing.</p>

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<p>1 were referring to the Accurate 1681, you were 2 intending to refer to Accurate 1680?</p> <p>3 A That's correct.</p> <p>4 Q All right. Thank you. Did you ever consider 5 testing your exemplar rifle by test-firing it with an 6 overlap between the barrel catch and the barrel lug 7 of 60/thousandths of an inch?</p> <p>8 A I looked at doing that, thought it would be 9 difficult to hold it to the level that I wanted to do 10 it; and ultimately, because of the characteristics I 11 found in the subject weapon, I felt it wasn't 12 necessary to render my opinions in this case.</p> <p>13 Q Why did you consider doing it with your 14 exemplar?</p> <p>15 A Because that was the engagement I determined; 16 and even though it's dangerous, I wanted to see if 17 there was some possible way I could do that with the 18 exemplar firearm; and to maintain safety, I wasn't 19 able to do that and didn't feel it was necessary.</p> <p>20 Q Okay. With regard to the first part of that 21 -- so the reason you didn't do it is, number one, is 22 you couldn't determine how to do it safely; and the 23 second reason is based on the characteristics of the 24 subject rifle; you didn't think it was necessary?</p> <p>25 A Correct.</p>	<p>1 Batts rifle.</p> <p>2 Q Let's put the damage aside. Let's assume for 3 purposes of my question here, hypothetic, let's 4 assume that there was no damage that you are 5 describing. Would that alter your opinion as to the 6 cause of this incident?</p> <p>7 A I don't know. I haven't considered that. I 8 mean, I'm looking at all the evidence at once.</p> <p>9 Q Are you saying, Mr. Powell, that any person 10 who viewed Mr. Batts' incident video and measured the 11 engagement of the -- measured the engagement between 12 the barrel catch and the barrel lug and looked at the 13 surface of the barrel lug microscopically would 14 arrive at the same conclusion you have?</p> <p>15 A Correct.</p> <p>16 MR. MEADOR: Objection. Speculation.</p> <p>17 Q (By Mr. Danekas) Correct?</p> <p>18 A I would expect them to, yes.</p> <p>19 Q In considering those three items, what 20 engineering expertise did you bring to the table in 21 that analysis?</p> <p>22 A My engineering evaluation of components over 23 the history of my failure-analysis work, as well as 24 my expertise in measuring components and evaluation 25 of damage materials.</p>
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<p>1 Q With regard to the first reason that you 2 couldn't do it safely, I think we touched upon this 3 earlier.</p> <p>4 A Well, we touched on both of those. That's 5 correct.</p> <p>6 Q Okay. And the first -- and there would be a 7 way of conducting it safely if you really wanted to 8 do that testing; correct?</p> <p>9 A Possibly, yes.</p> <p>10 Q And with regard to the second reason, you 11 didn't think testing an exemplar, setting it at -- 12 your exemplar setting it at 60/thousandths engagement 13 was necessary because based on the characteristics of 14 the Batts rifle and the video you saw, you didn't 15 think there was any necessity for that type of test 16 with the exemplar?</p> <p>17 A That's correct.</p> <p>18 Q Is it accurate to say that your conclusion 19 that the exemplar engagement -- that the barrel catch 20 disengaged from the barrel lug on the Batts rifle is 21 based on your viewing of the Batts video of the 22 incident, as well as the radiography and measurement 23 of the engagement of the subject rifle?</p> <p>24 A Yes, and the microscopic examination of the 25 damage that was present on the lug and catch from the</p>	<p>1 Q If you had -- if you had tested your exemplar 2 by setting the engagement at 60/thousandths and 3 firing the factory ammunition, would you expect the 4 -- would you expect the barrel catch and the barrel 5 lug to disengage and the action to open as it did in 6 the Batts' incident?</p> <p>7 A I would expect them to be damaged. I don't 8 know if it would open the first time in the -- as it 9 did in the Batts incident. I would have to compare 10 and look at if those same types of particles were 11 present in the exemplars that were in the Batts rifle 12 on that engagement surface.</p> <p>13 Q Did the -- strike that. I take it that you 14 were unaware that Mr. Batts used any lubricant or oil 15 in the chamber until you saw the recently recovered 16 video?</p> <p>17 A Correct.</p> <p>18 Q In your opinion, did the oil play any role in 19 causing this -- the incident?</p> <p>20 A No.</p> <p>21 Q If you were to test your exemplar with 22 60/thousandths of engagement between the barrel catch 23 and the barrel lug, would your setup for that testing 24 be different than what you utilized in your field 25 testing in late May? In late May.</p>

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<p style="text-align: right;">Page 57</p> <p>1 A It would not have differed insofar as 2 protecting myself and anybody else around the firing 3 of the rifle, if you could hold it to that particular 4 value.</p> <p>5 Q If I understand you correctly, the exemplar 6 you spoke of, the .145 inches, that is -- that is the 7 length of overlap between the barrel catch and the 8 barrel lug; true?</p> <p>9 A In the exemplar firearm, correct.</p> <p>10 Q In the exemplar, yes.</p> <p>11 A Yes.</p> <p>12 Q As you sit here today, do you know the length 13 of the actual engagement between the barrel catch and 14 the barrel lug in your exemplar?</p> <p>15 A I haven't looked at it since the test. I 16 would expect it still to be .145.</p> <p>17 Q But didn't we agree that overlap is not the 18 same as contact?</p> <p>19 A We did.</p> <p>20 Q Are you saying that overlap is the same as 21 engagement?</p> <p>22 A Yes, as I've used those terms today.</p> <p>23 Q Okay. So overlap equals engagement, but that 24 does -- neither of those equates to contact?</p> <p>25 A Correct, because as we discussed about the</p>	<p style="text-align: right;">Page 59</p> <p>1 before we broke briefly, I had asked you what the 2 specification was for the engagement of the barrel 3 catch with the barrel lug.</p> <p>4 A I measured it on my exemplar rifle, the 5 barrel catch in it, to be a minimum of .088 inches.</p> <p>6 Q You say you measured it on your exemplar?</p> <p>7 A Yes. If I place the edge of the indicating 8 notch on the latch, at the edge of the barrel catch, 9 then the remaining amount of overlap or engagement 10 would be .088 inches.</p> <p>11 Q Okay. So if there was overlap or engagement 12 between the barrel catch and the barrel lug of .088 13 inches or greater, that would meet or exceed 14 specification; correct?</p> <p>15 A Yes, based on my evaluation of this barrel 16 catch, correct.</p> <p>17 Q Okay. If at the time of the incident the 18 overlap or engagement of the incident rifle had been 19 .088 inches, would the incident have occurred?</p> <p>20 A No. That latch should have been able to 21 withstand a normal firing.</p> <p>22 Q But the 60/thousandths of overlap or 23 engagement, as you've described in your opinion, was 24 not able to withstand the firing?</p> <p>25 A Not with the presence of those little</p>
<p style="text-align: right;">Page 58</p> <p>1 difference between contacting as a curved surface 2 with a flat surface.</p> <p>3 Q If the Batts rifle, the subject rifle, had 4 had .145 inches of overlap, slash, engagement, would 5 the incident have occurred?</p> <p>6 A No.</p> <p>7 Q What is spec for engagement between the 8 contact barrel catch and the barrel lug?</p> <p>9 A I don't remember what it is specifically 10 offhand. Do you want me to look it up?</p> <p>11 Q Please.</p> <p>12 A Well, this is going to be a bit. Do you want 13 me to -- because I have a picture of the position of 14 the barrel catch with the indicator notch and where 15 it should be, and then I'm going to have to compare 16 that to the drawings of the component.</p> <p>17 Q Go ahead.</p> <p>18 A Okay.</p> <p>19 MR. DANEKAS: Yeah, we can go off the camera 20 while he is finding that.</p> <p>21 VIDEOGRAPHER: Off the record 11:42. 22 (Recess held)</p> <p>23 VIDEOGRAPHER: We're back on the record at 24 11:48.</p> <p>25 Q (By Mr. Danekas) Okay. Mr. Powell, I think</p>	<p style="text-align: right;">Page 60</p> <p>1 particles that were present on that surface, no.</p> <p>2 Q All right. Well, let's explore that. If the 3 length of engagement with the incident rifle had 4 been .88 [sic] inches or greater, all things else 5 being equal, I think you just told me that the 6 incident would not have occurred; correct?</p> <p>7 A Yes, absent any type of contamination between 8 the surfaces, and the subject rifle did have that 9 contamination.</p> <p>10 Q And I didn't catch that last part.</p> <p>11 A Did have that contamination.</p> <p>12 Q The incident rifle did have the 13 contamination?</p> <p>14 A It did.</p> <p>15 Q Okay. Well, let me ask you to assume that 16 the condition of the Batts rifle is the same as your 17 exemplar but for the 60/thousandths of overlap or 18 engagement. Follow me?</p> <p>19 A I do.</p> <p>20 Q Would the incident have occurred?</p> <p>21 A I don't know.</p> <p>22 Q And you don't know because you haven't tried 23 testing it; correct?</p> <p>24 A That's correct.</p> <p>25 Q Okay. Now, assume -- assume that the subject</p>

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<p style="text-align: right;">Page 61</p> <p>1 rifle, the Batts' rifle was within spec, minimum of 2 88/thousandths of engagement or overlap. Everything 3 else being equal in the subject rifle, would the 4 incident have occurred?</p> <p>5 A With the contamination that I observed 6 present?</p> <p>7 Q Yes.</p> <p>8 A Present there? I don't know.</p> <p>9 Q You haven't tested for that either; correct?</p> <p>10 A That's correct. I haven't felt it was 11 necessary to, to evaluate what the Batts rifle did 12 when it fired on the day of his injury.</p> <p>13 Q Right. Well, and you haven't felt it was 14 necessary because you viewed the video. You saw the 15 incident happen. You measured the engagement or 16 overlap; and in your opinion, through visual 17 microscopic examination of the surfaces, you found 18 these abnormalities you've described; right?</p> <p>19 A That's correct.</p> <p>20 Q And based on those three things, you 21 concluded that the accident occurred because of 22 inadequate engagement?</p> <p>23 A Correct.</p> <p>24 Q But you conducted no testing to determine if 25 that conclusion is correct or not.</p>	<p style="text-align: right;">Page 63</p> <p>1 engagement.</p> <p>2 Q Why did you conduct that range-testing with 3 your exemplar that we've talked about? The four 4 shots you fired without oil and then the three series 5 of three shots?</p> <p>6 A It's been reported in various literature, 7 books and reloading manuals that fluids in the 8 barrels of firearms: Oil, water, and other types of 9 contaminates, can cause overpressurization of the 10 barrel, and I wanted to eliminate that from happening 11 -- from -- eliminate it or include it in, if it was 12 something that affected the firing of Mr. Batts' 13 rifle.</p> <p>14 Q So your hypothesis was -- for this testing 15 was that the application of the oil might have 16 increased the pressure of the incident round?</p> <p>17 A Yes, to the extent that it would unlatch.</p> <p>18 Q Okay. And that's why you ran that testing?</p> <p>19 A Correct.</p> <p>20 Q When you did this testing, you understood 21 from the prior radiography and measurements that in 22 your view the engagement overlap on the subject 23 rifle, Mr. Batts' rifle, was 60/thousandths of an 24 inch; correct?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 62</p> <p>1 A No. I did do the testing that you just 2 described, and it is correct.</p> <p>3 Q Okay. The test --</p> <p>4 A Because we saw what happened right on the 5 video; right?</p> <p>6 Q Yes, we did. We saw what happened. And the 7 testing -- I don't think I described any testing; but 8 as I understand it, Mr. Powell, you're saying that 9 the measurement of the engagement overlap, along with 10 the visual microscopic examination of the surfaces, 11 constitute testing?</p> <p>12 A Correct, together with the evaluation of the 13 CAT scans and the digital radiographs, correct.</p> <p>14 Q Okay. So beyond the evaluation of the CAT 15 scan, the radiograph and the microscopic visual 16 examination of the surfaces, have you conducted any 17 other testing to rule in or rule out your hypothesis 18 that inadequate engagement caused this incident?</p> <p>19 A Well, I conducted additional range-testing, 20 as you're aware --</p> <p>21 Q Uh-huh.</p> <p>22 A -- after the video was presented to me 23 showing Mr. Batts applying oil down the barrel of his 24 rifle, and we had no unlatching engagements in that, 25 with the exemplar rifle, with the appropriate</p>	<p style="text-align: right;">Page 64</p> <p>1 Q Why didn't you then, when you ran the oil 2 testing, utilize 60/thousandths of an inch of 3 engagement or overlap with your exemplar rifle?</p> <p>4 A Because I was trying to determine if a 5 properly latched rifle and the oil would have 6 unlatched, and it did not. So the Batts rifle that 7 has less than half of the proper engagement, by the 8 Remington documents, is -- is inadequately latched.</p> <p>9 Q How do you know that?</p> <p>10 A Because they gave me the specification. They 11 told me that if that indicator mark is not covered on 12 the barrel lug, then that catch is a no-go.</p> <p>13 Q I understand that based on your measurements 14 on the specs, that the engagement or overlap on the 15 Batts' rifle was below spec. That's your view; 16 correct?</p> <p>17 A It is.</p> <p>18 Q Okay. Does that necessarily equate in your 19 view to a dangerous condition?</p> <p>20 A It does.</p> <p>21 Q How do you know that?</p> <p>22 A Because it's out of spec.</p> <p>23 Q So anything that is out of spec is, without 24 question, in your view, a dangerous condition?</p> <p>25 A In the case of a barrel latch, yes.</p>

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<p style="text-align: right;">Page 65</p> <p>1 Q Okay. Your hypothesis and the reason you ran 2 your field-testing was to determine if the 3 application of oil in a rifle engaged at 4 145/thousandths of an inch, with a factory round, 5 would open; right?</p> <p>6 A Correct.</p> <p>7 Q And your testing revealed that with the 8 application of oil and the use of a factory round, an 9 engagement of approximately 145 -- .145 inches, the 10 action would not open?</p> <p>11 A Correct.</p> <p>12 Q Have you run any testing similar to what -- 13 these field tests that you did, that we just 14 described, have you run any field test to rule in or 15 rule out that a rifle engaged at 60/thousandths would 16 open with use of a factory round and the use of oil?</p> <p>17 A Well, Mr. Danekas, as we've discussed a 18 number of times today, I have not run any tests with 19 the engagement at that low value that was exhibited 20 by the subject rifle. I didn't feel it was necessary 21 to because I could see the damage created on those 22 surfaces; and based on my testing and evaluation of 23 the things we've already discussed, I felt 24 comfortable in showing that that rifle was defective 25 and opened up as a result of that low engagement.</p>	<p style="text-align: right;">Page 67</p> <p>1 action to open?</p> <p>2 A Yes.</p> <p>3 Q And you would expect the cartridge case to be 4 propelled rearward with force that would go through 5 eyeglasses and into somebody's eye?</p> <p>6 A I would expect it to be -- to be expelled at 7 force from the rear of the barrel; and whether it 8 goes into glasses or eyes depends on angle and impact 9 velocity.</p> <p>10 Q Did you determine the force or velocity of 11 the cartridge case that was expelled when the 12 incident occurred?</p> <p>13 A I did not.</p> <p>14 Q What is a contact vector?</p> <p>15 A I'm sorry? A contact --</p> <p>16 Q What is a contact vector?</p> <p>17 A A contact vector?</p> <p>18 Q Yes.</p> <p>19 A I don't recognize that term.</p> <p>20 Q Did you perform any dynamic analysis of the 21 locking mechanism on the Batts rifle?</p> <p>22 A No.</p> <p>23 Q Did you perform any engineering analysis of 24 the locking mechanism?</p> <p>25 A Yes.</p>
<p style="text-align: right;">Page 66</p> <p>1 We've discussed that several different times today.</p> <p>2 Q Did you attempt to determine if what you are 3 saying was damage on the surfaces of the lug and the 4 barrel catch was a result of the incident or a result 5 of wear?</p> <p>6 A Well, it definitely wasn't the result of 7 wear, which is the removal of material because of the 8 surface contact between two materials. It was 9 actually small compressed particles that were present 10 on that location.</p> <p>11 Q Would you agree, Mr. Powell, that if there -- 12 if there had been zero engagement or overlap between 13 the barrel catch and the barrel lug, that that would 14 be even less robust engagement as what you have 15 observed on the Batts rifle?</p> <p>16 A It would be no engagement, if that's what 17 you're asking.</p> <p>18 Q Yes.</p> <p>19 A It's no engagement versus a small, defective 20 amount of engagement.</p> <p>21 Q Yeah. That would be even worse?</p> <p>22 A Yes.</p> <p>23 Q And you would expect that with zero 24 engagement, if a factory round was fired through a 25 rifle with zero engagement, you would expect the</p>	<p style="text-align: right;">Page 68</p> <p>1 Q What?</p> <p>2 A The testing we've already discussed, sir.</p> <p>3 Q All right. Is it accurate to say, 4 Mr. Powell, that the only test-firing of any rifle 5 you've done in connection with this case was the 6 field-testing that you did in late May with your 7 exemplar that you talked about?</p> <p>8 A Yes. There were some additional firings, not 9 on videotape, just to zero in the scope; but other 10 than that, no.</p> <p>11 Q When was that test -- was that done at the 12 same time as what we've seen on video?</p> <p>13 A I think it was done the -- the zeroing of the 14 scope was done on May 25th, and then the testing with 15 the oil was done on May 28th of this year.</p> <p>16 Q And the test-firing you did on May 24th 17 that's not on video, how many test rounds were fired?</p> <p>18 A I don't recall offhand. There were -- when I 19 submitted these videos to you -- where is my range 20 videos?</p> <p>21 There was testing done on May 25th, and there 22 were two video takes made then, where I was just 23 watching to see if my cellphone would show 24 slow-motion views of that, and at that same time I 25 fired a number of rounds to zero the scope.</p>

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<p>1 Q And in any of those -- and I think we have 2 the two videos you took on May -- 3 A Yes. 4 Q -- 24th. 5 A Yes. 6 Q At any time on May 24th, did the action open? 7 A No. The action has never opened from firing 8 on the exemplar rifle. 9 Q Have you performed any mechanical engineering 10 analysis of the locking mechanism? 11 A No. 12 Q Okay. Let's do a little housekeeping. Then 13 we'll take a break for lunch. 14 I want to go through the deposition notice 15 and rider briefly which we marked as -- I pre-marked 16 some exhibits, Bob, so there may be some I don't use. 17 So if I'm skipping around numbers, it's not to worry. 18 But <u>Exhibit 1</u> is -- I have one for you and one for 19 Mr. Powell. 20 A The original is going to go to the court reporter or... 22 Q Do you have the original on there? 23 A I have the one that was sent to me, yes. 24 It's not marked. 25 Q Well, we marked one as an -- Exhibit Number</p>	<p>1 what Dale says about you; you know that? 2 REPORTER: We're going to have to change his 3 mind. 4 MR. DANEKAS: Mark these beginning with <u>38</u> 5 onward. If you could hand those to Mr. Powell. 6 MR. MEADOR: Are those the notes produced 7 today for the depo? 8 MR. DANEKAS: <u>38</u> is, yeah. 9 Q (By Mr. Danekas) Mr. Powell, <u>Exhibit 38</u> are 10 some notes that you produced this morning before we 11 started the deposition; is that correct? 12 A Yes. 13 Q And these notes in <u>Exhibit 38</u> were not 14 produced prior to today, as I understand it; is that 15 correct? 16 A Yes. Yes. Pardon me. 17 Q Okay. The last two pages seem to be notes 18 you took from a review of Mr. Batts' deposition; is 19 that correct? 20 A That's correct. 21 Q When did you review his deposition to take 22 these notes? 23 A It looks like that was done on May 13th, 24 2019. 25 Q Is that the first time you reviewed his</p>
Page 70	Page 72
<p>1 <u>1?</u> The one that she is -- yeah. 2 A These go to the court reporter? 3 Q They will. They will, yeah. 4 A Okay. I don't want to keep anything that's 5 not supposed to be mine. 6 MR. DANEKAS: We'll make -- 7 MR. MEADOR: Oh, she won't let you leave with 8 if -- 9 MR. DANEKAS: She won't let you leave, yeah. 10 THE WITNESS: Okay. 11 Q (By Mr. Danekas) Mr. Powell, we've marked as 12 <u>Exhibit 1</u> our Second Amended Notice of your 13 deposition for today. You have seen this document? 14 A I have. 15 Q I know that Mr. Meador sent me a couple of 16 objections which, for purposes of this deposition, I 17 have no quarrel with, Bob. Subject to those 18 objections, Mr. Powell, have you produced either 19 electronically or today everything on this notice? 20 A Yes. 21 Q Let me go through a couple of these 22 specifically. Let's see. Terry, before we get too 23 far down the road, let me do this. Start with -- 24 REPORTER: <u>38.</u> 25 MR. DANEKAS: Yes, you're good. I don't care</p>	<p>1 deposition? 2 A Yes. 3 Q When did you first receive his deposition? 4 A Shortly there -- shortly before that. 5 Q By what method? 6 A Electronic. 7 Q Letter or electronic? 8 A It was e-mailed to me. 9 Q Have you ever seen the video of his 10 deposition? 11 A I have not. 12 Q Have you ever -- have you ever asked to see 13 it? 14 A No. 15 Q Have you seen the -- or -- strike that. Have 16 you read the deposition of his wife? 17 A I have not. 18 Q On <u>Exhibit 38</u>, what are the other notes that 19 you have there? And you can go through them fairly 20 quickly I think and describe what they are. 21 A Do you want me to describe them page by page? 22 Q Yeah. 23 A Okay. 24 Q You can be pretty brief; and if I want to 25 interrupt you -- if I need to interrupt you, I will.</p>

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<p style="text-align: right;">Page 73</p> <p>1 A Page 1 is measurements of cartridge case 2 walls and the breech end of the barrel of the 3 exemplar rifle in getting dimensions that would use 4 to calculate pressures.</p> <p>5 Page 2 shows pressures recorded during the 6 range-testing, as well as some calculations and 7 measurements used to estimate the thrust loads 8 created during those firings.</p> <p>9 The next page is measurements made on the 10 exemplar rifle to ensure that it was going to be safe 11 to use.</p> <p>12 The next page is the calculated thrust loads 13 from the different small Fuji Prescale film that were 14 attached to the fired cartridge cases for the 15 range-firing on May 28th. At the bottom were some -- 16 two calculations for a 223 Remington and a 30-aught-6 17 looking at what the thrusts might be if the 18 cartridges are not adhering to the walls of the 19 chamber.</p> <p>20 The next page is just again a summary of 21 velocity pressure and thrust loads measured during a 22 range-firing.</p> <p>23 And then the next two or three pages were 24 notes that I made there at the range when the 25 test-firing was going on.</p>	<p>1 and the Batts rifle x-rayed on December 12, 2016; 2 correct?</p> <p>3 A Correct. You had asked as part of the 4 exhibits to bring to the deposition were I think my 5 returned check and any paperwork I had --</p> <p>6 Q Correct.</p> <p>7 A -- with TGR, and this is it.</p> <p>8 Q I understand. Is that the only x-ray you had 9 taken of either your exemplar or the Batts rifle 10 until the North Star exam in November of 2017?</p> <p>11 A Yes.</p> <p>12 Q Okay. <u>Exhibit 40</u>, is it?</p> <p>13 A <u>41</u> would be next.</p> <p>14 Q <u>41</u>. Okay. 41 is a copy of your folder 15 entitled "Thrust Load of Breech, slash, Lugs."</p> <p>16 A Yes.</p> <p>17 Q And that includes a copy of the article you 18 mentioned earlier regarding analysis -- using these 19 stickers or film on the cartridge case to attempt to 20 measure thrust?</p> <p>21 A Yes.</p> <p>22 Q <u>42</u> is a copy of your folder entitled "Strain 23 Gage," and I'd asked for you to bring information 24 concerning the strain gage you used for your 25 field-testing; correct?</p>
<p style="text-align: right;">Page 74</p> <p>1 And then the last two pages are the notes I 2 made during the review of the deposition of Jon 3 Batts.</p> <p>4 Q Okay. <u>Exhibit 39</u> is a copy of a folder from 5 your file entitled "Technical Literature -- 300 AAC 6 Blackout"?</p> <p>7 A Yes.</p> <p>8 Q And I think most, if not all of this 9 material, was provided previously, but I thought I 10 saw a couple of things in there that may not have 11 been.</p> <p>12 A The ones that would not have been provided 13 previously, I think I listed in my subsequent report 14 -- pardon me. Supplemental engineering report, and 15 that was from -- there is a section in here from 16 "Modern Reloading" from Richard Lee and "Handloading 17 Guide" from Western Powders. Those would be in this 18 particular folder.</p> <p>19 Q All right. And <u>Exhibit 40</u> is a copy of your 20 folder entitled "Radiography"; is that correct?</p> <p>21 A Yes.</p> <p>22 Q And one of the reasons I mention this is I'm 23 not sure I'd seen this invoice from TGR Industrial 24 Services. It's dated December 21, 2016, for -- it's 25 entitled "RT Testing." You had the -- your exemplar</p>	<p>1 A Correct.</p> <p>2 Q And <u>43</u> is information Fuji Prescale film, and 3 that has some information regarding that. These 4 graphs in <u>Exhibit 43</u>, are these specific to this case 5 or just illustrative?</p> <p>6 A Well, they are illustrative, but they were 7 also utilized during the initial evaluation of the 8 thrust loads. You basically use a color chart to 9 prepare the areas of the impact-loading on the film, 10 and then use that color determination with a 11 particular chart for the type of film and the type of 12 impact and get a value, and then you use that value 13 to calculate pressure and, thus, load.</p> <p>14 Q Okay. Looking at the <u>Exhibit 1</u> -- excuse me. 15 <u>Exhibit 1</u>, your notice of your deposition, the first 16 item is asking for all information regarding -- or 17 relating to your testing that replicates, validates 18 or supports the deponent's -- that's you -- your 19 opinions.</p> <p>20 Other than your examination, visual 21 examinations of the rifle and the bullet and the 22 shell and your review of the radiography and the CT 23 scans and your review of the video showing the 24 incident and the field-testing that you recently 25 conducted utilizing the oil, is there any other</p>

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<p style="text-align: right;">Page 77</p> <p>1 information that in your view supports your opinions 2 about the rifle and the cause of the incident? 3 A And the microscopic examination -- 4 Q I meant to -- 5 A -- of the surfaces. 6 Q I intended to include that. Anything else? 7 A No. 8 Q Number 2 is any information that does not 9 validate or support your opinions. 10 A I do not have any. If there were some there, I would have brought it. 12 Q 3 is asking for records relating to 13 compensation paid for your involvement in this 14 lawsuit, and you have produced invoices. 15 A Right. 16 Q Is there anything else? 17 A That's it. 18 Q We'll get to that. 4, we've taken care of. 19 5 asks for any information regarding your 20 testing of the subject rifle or any other 21 Handi-Rifle. Using your definition of testing, 22 you've produced all items responsive to number 5? 23 A I have. 24 Q 6 is all transcripts of testimony, 25 statements, reports, photographs, exhibits and videos</p>	<p style="text-align: right;">Page 79</p> <p>1 Q -- was in May of 2019? 2 A May of 2019, correct. 3 Q Is there any significance of the game 4 warden's report for your opinions in this case? 5 A Well, I don't think it adequately describes what happened in Mr. Batts' injury. 7 Q What do you mean by that? 8 A They indicate that when he opened the breech, the round fired. I think it's just the opposite. 10 The round fired and the breech opened, as the video 11 shows. 12 Q Okay. There is also reference in the game 13 warden's report to a statement of somebody who said 14 that Mr. Batts had used a clearing rod to remove a 15 round from the rifle before the incident occurred. 16 A Correct. 17 Q Is that of any significance to you? 18 A Well, I saw the video that was presented, I think it's called Recover 7, that showed Mr. Batts doing exactly that, so I think that's accurate. 21 Q When did you first become aware of that 22 recovered video? 23 A Just right before my previous deposition 24 date, when it was sent to me. Let me see if I've got 25 that date here.</p>
<p style="text-align: right;">Page 78</p> <p>1 concerning the incident or the condition of the 2 subject rifle that you have reviewed or relied upon. 3 You've produced all of that today? 4 A I have. 5 Q The only testimony that you reviewed is 6 Mr. Batts' testimony; correct? 7 A Correct. 8 Q There were a couple of investigative reports 9 from the U.S. Army. Have you seen those? 10 A I've seen one. 11 Q You've seen one. Is that the game warden 12 report where he refers to a witness who says that he 13 refers to Mr. Batts using a clearing rod to remove a 14 bullet from the barrel? 15 A I believe so. It's a -- it's an e-mail -- I'm trying to get a number. It's got a case number on it. And it's a -- I think it was done by Tony Randall, Police Tech Services tech, and let's see who signed the back one. Chief -- a game warden chief at Fort Hood, a Mr. Al Lankford. 21 Q Lankford. When did you receive that? 22 A I probably received it near the time I received his deposition. 24 Q Which I think you told me -- 25 A Somewhere in May.</p>	<p style="text-align: right;">Page 80</p> <p>1 I don't see that I have a copy of it here on 2 my computer. I've looked at it. I don't know why I 3 don't have a copy on here, but it would have been 4 just right before I did the range-testing, so middle 5 of May 2019. 6 Q You received then both the game warden's 7 report and the recovered video in roughly mid-May of 8 2019? 9 A Correct. 10 Q I understand, Mr. Powell, that in light of 11 there be -- the recovered video, that you wanted to 12 do additional testing; is that correct? 13 A Yes. 14 Q And is that additional testing what we've 15 talked about already, the field testing where you 16 applied oil to the chamber? 17 A That's correct. 18 Q Was that the only additional testing that you 19 wanted to do after receiving the recovered video in 20 mid-May? 21 A Yes. 22 Q If you had received the game-warden report 23 earlier but not the recovered video, would you have 24 wanted to do any additional testing? 25 A Not necessarily. The game-warden report</p>

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<p style="text-align: right;">Page 81</p> <p>1 was -- you know, had all kinds of things in it that I 2 didn't think were accurate. So I don't know if the 3 report, that he had used a range rod to remove, that 4 I would consider particularly accurate; but certainly 5 either the deposition testimony or in this case the 6 video would have certainly prompted me to believe 7 that that was true.</p> <p>8 Q Okay. Other than the action opening -- that 9 the round ejected when Mr. Batts opened the action, 10 as you alluded to in the game-warden report, is there 11 anything else in that report that you considered to 12 be inaccurate?</p> <p>13 A Well, that entire area description, where it 14 says, "He was firing his firearm. The round did not 15 fire. When the breech was open, the round fired." I 16 think that entire description, I do not think is 17 accurate.</p> <p>18 But the description of his injury and how 19 that occurred, I think that's all accurate: The 20 breech opened; the case came back and hit his eye. 21 And they talk more about the people that were 22 present, how they inspected the rifle and advised him 23 to have it inspected by a gunsmith, and that type of 24 thing is all fine.</p> <p>25 Q Based on review of the recovered video,</p>	<p style="text-align: right;">Page 83</p> <p>1 Q How did you download it?</p> <p>2 A I just stuck it into my computer and 3 downloaded it.</p> <p>4 Q What -- your computer is a Windows-based 5 computer?</p> <p>6 A Yes.</p> <p>7 Q So you put the SD card in your computer, the 8 same computer you have here with you today?</p> <p>9 A I think so, yes.</p> <p>10 Q And so you -- how did you copy it? Did you 11 open Windows Explorer?</p> <p>12 A I probably did, yes.</p> <p>13 Q Okay. So you brought up the contents of the 14 SD card; correct?</p> <p>15 A Correct.</p> <p>16 Q Did you notice any other videos on the SD 17 card?</p> <p>18 A There was other material on the SD card, yes.</p> <p>19 Q How did you know which video to download?</p> <p>20 A I already had a copy of the video e-mailed to 21 me, and then I used that to get the original video, 22 of that video, hoping it would be better quality.</p> <p>23 Q The copy that was sent to you -- strike that.</p> <p>24 The video on the SD card was numbered GOPR 5588, was 25 it not?</p>
<p style="text-align: right;">Page 82</p> <p>1 Mr. Batts did use some type of rod to remove the 2 stuck bullet; right?</p> <p>3 A He did. He fired a squib load that showed 4 low recoil, and the bullet ended up poking out the 5 end of the muzzle of his rifle, and then he used a 6 clearing rod to push that out, and then I think a 7 bore snake to clean the bore out.</p> <p>8 Q You talked about a game-warden report and 9 some of the aspects you consider to be not accurate. 10 In reviewing a case, based on your review of the 11 physical evidence and examinations you might do and 12 testing that you might do, do you sometimes evaluate 13 whether certain statements and/or testimony is 14 accurate or inaccurate?</p> <p>15 A Sure, based on the physical evidence.</p> <p>16 Absolutely.</p> <p>17 Q You had in your possession, as I understand 18 it, Mr. Powell, the SD card that was in Mr. Batts' 19 GoPro camera at the time of his incident; correct?</p> <p>20 A Correct.</p> <p>21 Q What did you do with that SD video card?</p> <p>22 A I downloaded the video that was on it that 23 showed the injury from Mr. Batts, and that's it. And 24 then held on to it until I gave it back to 25 Mr. Meador.</p>	<p style="text-align: right;">Page 84</p> <p>1 A Yes, it was.</p> <p>2 Q Did you notice at the time you put the SD 3 card in your computer that there was also a video 4 called GOPR 5586?</p> <p>5 A No. I didn't make any notes of that. I just 6 wanted that particular video.</p> <p>7 Q I take it, Mr. Powell, that other than 8 downloading the video of the incident from the SD 9 card, that you did nothing else with the SD card?</p> <p>10 A Correct.</p> <p>11 Q You did not delete any video that was on the 12 SD card; correct?</p> <p>13 A Correct.</p> <p>14 Q How many times did you have the SD card in 15 your computer?</p> <p>16 A That was a year or so ago. I don't recall.</p> <p>17 Certainly once. I doubt that I put it in there more 18 than once.</p> <p>19 Q Are you now aware that there was a video that 20 was at some point deleted from that SD card?</p> <p>21 A You know, I don't know anything about 22 deletions. I just know that someone has presented to 23 me a video titled "Recover" -- I think there may have 24 been a number, like "Recover 7," and I received that 25 video, and I was told it was on that SD card. That's</p>

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<p>1 all I know.</p> <p>2 Q The box of the ammunition that we have you</p> <p>3 referred to earlier in the yellow -- yellow, geez --</p> <p>4 the red box?</p> <p>5 A Yes.</p> <p>6 Q There is a number on there, on the box. Is</p> <p>7 that a number that you placed on the box?</p> <p>8 A That 160201?</p> <p>9 Q Yes.</p> <p>10 A It is.</p> <p>11 Q And that's your file number; and if I can</p> <p>12 discern your approach, 16 refers to the year?</p> <p>13 A Correct.</p> <p>14 Q 02 refers to the month?</p> <p>15 A Yes.</p> <p>16 Q And 01 refers to the day?</p> <p>17 A No. The 01 would just be how many cases came in that month. That would be the first case that came in, in February of 2016.</p> <p>18 Q So sometime in February, you opened a file in</p> <p>19 this matter?</p> <p>20 A Correct.</p> <p>21 Q It just happened to be the first file you</p> <p>22 opened in February of 2016?</p> <p>23 A That's correct.</p>	<p>1 digitometer to get more accurate thrust values.</p> <p>2 Q And number 35, you have produced all the</p> <p>3 video and photographs of the test-firing?</p> <p>4 A I have.</p> <p>5 Q We had your deposition scheduled in February</p> <p>6 of this year, and it was continued. Do you know why?</p> <p>7 A I think because my client wanted me to do the additional testing.</p> <p>8 Q In February?</p> <p>9 A In February?</p> <p>10 Q Yes.</p> <p>11 A I don't recall in February. I thought -- I don't recall that it was...</p> <p>12 Q All right.</p> <p>13 A I mean, things have happened in the case that I don't -- I'm not aware of. So I don't know why it was canceled in February.</p> <p>14 Q We'll take care of a little more housekeeping</p> <p>15 and then we'll take a break. Bob?</p> <p>16 MR. MEADOR: Sure.</p> <p>17 Q (By Mr. Danekas) This is <u>Exhibit 8</u>. If you</p> <p>18 can hand that to Mr. Powell. This is his paper file,</p> <p>19 Bob.</p> <p>20 MR. CHANEY: A copy for you, Bob.</p> <p>21 MR. DANEKAS: Do you want it?</p>
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<p>1 Q Mr. Batts in his deposition identified that</p> <p>2 number on that ammo box as his. Do you have any</p> <p>3 explanation as to why he might have done that?</p> <p>4 A No.</p> <p>5 Q No doubt in your mind that that's your</p> <p>6 writing on the box?</p> <p>7 A Correct.</p> <p>8 Q And that box -- when the ammo was presented</p> <p>9 to you, that ammo was in that box?</p> <p>10 A Correct.</p> <p>11 Q Did you bring -- I'm looking at Item Number</p> <p>12 33 in this Notice of Deposition. Did you bring the</p> <p>13 spent cartridge cases from your test-firing?</p> <p>14 A Yes.</p> <p>15 Q All of them?</p> <p>16 A Yes.</p> <p>17 Q And did you bring the high-pressure</p> <p>18 sensitive-film disks that you mentioned?</p> <p>19 A I have photographs of them. As I mentioned to Mr. Meador, those were supposed to have been returned earlier in this week, but now I'm told they are due for delivery today, and so they are not here with me.</p> <p>20 Q Returned from whom?</p> <p>21 A From Sensor, Incorporated. They used their</p>	<p>1 MR. MEADOR: Oh. Thank you. I'm sorry.</p> <p>2 Q (By Mr. Danekas) <u>Exhibit 8</u> is a copy of your</p> <p>3 paper file?</p> <p>4 A Yes.</p> <p>5 Q I will just ask you a few questions about it.</p> <p>6 Let's go to the invoices toward the end first.</p> <p>7 A It's on Bates page --</p> <p>8 Q Yeah, I have actually Bates-labeled them</p> <p>9 so --</p> <p>10 A Yes.</p> <p>11 Q -- we can refer to them easier.</p> <p>12 A So number 79.</p> <p>13 Q They begin on page 79?</p> <p>14 A Correct.</p> <p>15 Q And your invoices run through 80 -- strike</p> <p>16 that. 91?</p> <p>17 A Yes.</p> <p>18 Q Okay. Do you have any invoices subsequent to</p> <p>19 what is depicted on page 91? They run through March</p> <p>20 of 2019.</p> <p>21 A I think there was one additional invoice that was added, if I'm not mistaken.</p> <p>22 Q Do you have that with you today?</p> <p>23 A Yes, I would have it with me if that's correct. Maybe you have it already. I think you</p>

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<p>1 already have it here. 91.</p> <p>2 Q Page 91 is the last --</p> <p>3 A Yeah.</p> <p>4 Q -- invoice?</p> <p>5 A That's correct.</p> <p>6 Q And the last entry for that is from March 24</p> <p>7 of 2019, and we know that you've been busy with all</p> <p>8 your test-firing in May.</p> <p>9 A Correct.</p> <p>10 Q But you've not issued an invoice since then?</p> <p>11 A Have not.</p> <p>12 Q Have you kept track of your time?</p> <p>13 A I'm sure I have, yes.</p> <p>14 Q Okay. How much time do you think you've</p> <p>15 spent on this case since March 14th of 2019 until</p> <p>16 today?</p> <p>17 A The only thing I think I've done is reviewed</p> <p>18 the report, the deposition, test-firing, so perhaps</p> <p>19 another 20 hours?</p> <p>20 Q Okay. Let's go to your invoices. I'm not</p> <p>21 going to go through each and every entry, but I have</p> <p>22 a few questions.</p> <p>23 A Sure.</p> <p>24 Q Page 80 -- they start on page 79. Your first</p> <p>25 contact with the case in this case was February 1 of</p>	<p>1 Q -- by way of document, photographs or video?</p> <p>2 A I do not.</p> <p>3 Q Why did you test-fire the exemplar?</p> <p>4 A To see if it was safe to fire.</p> <p>5 Q How many rounds did you fire?</p> <p>6 A Not very many.</p> <p>7 Q What kind of ammunition did you use?</p> <p>8 A It looks like I used exemplar Hornady 300</p> <p>9 Blackout and some additional Hornady bullets and</p> <p>10 propellant.</p> <p>11 Q Okay. And on March 3rd, you billed three</p> <p>12 hours for reloading test -- "Reload test ammunition."</p> <p>13 Did I read that correctly?</p> <p>14 A You did.</p> <p>15 Q How many rounds did you reload?</p> <p>16 A Not very many. Less than 10.</p> <p>17 Q Do you have any records of that?</p> <p>18 A I do not.</p> <p>19 Q Any photographs or videos of that?</p> <p>20 A I do not.</p> <p>21 Q You had exemplar Hornady 300 Blackout</p> <p>22 ammunition. What grain of bullet did you use?</p> <p>23 A 208 AMAX bullets.</p> <p>24 (Reporter interruption)</p> <p>25 THE WITNESS: 208 AMAX, A-M-A-X, bullets.</p>

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<p style="text-align: right;">Page 93</p> <p>1 A It is usually. It's surprising to me that 2 this was done, so I don't -- I don't recall. 3 Q Do you recall how many rounds you reloaded? 4 A Less than 10. 5 Q Do you remember the -- you already told me 6 the type of propellant. Do you remember the amounts 7 of -- the amount of propellant you used? 8 A Probably from -- well, not "probably." No, 9 since I don't have the records, I can't tell you 10 exactly, but somewhere between five to 10 grains. 11 Q In these 10 rounds or less that you fired, 12 did the exemplar open? 13 A No. It's never opened in any test. 14 Q So this test-firing of your exemplar rifle, 15 you took no photographs of it? 16 A No. 17 Q You took no videos of it? 18 A No. 19 Q And you created no records of it? 20 A Correct. 21 Q Did you think that at the time you were 22 conducting the test-firing in March of 2017 that the 23 amount of propellant could have been a factor in this 24 incident? 25 A No.</p>	<p style="text-align: right;">Page 95</p> <p>1 Q Now, this was work you did in connection with 2 this case; correct? 3 A Yes. 4 Q And you billed Mr. Meador for test -- testing 5 it? 6 A I did. 7 Q Do you believe it to be professional for an 8 expert in litigation to run tests and not keep any 9 records of it? 10 A In this case, I'm just evaluating a test 11 exemplar rifle. I think -- I do this all the time 12 trying to determine if the exemplar is going to be 13 one that I can utilize in further testing. 14 Q Can you explain for me why you billed for 15 reloading the ammunition on March 3rd -- and that's 16 the reloaded ammunition used in the test-firing; 17 correct? 18 A Yes. 19 Q And yet two days earlier is when you billed 20 for actually testing the exemplar rifle. Why is 21 that? 22 A I can't -- I can't tell you that. I don't 23 know. 24 Q Do you still have any of the components? 25 Because I think this was one of the things we asked</p>
<p style="text-align: right;">Page 94</p> <p>1 Q Was it your understanding in March of 2017 2 that Mr. Batts was firing factory-compliant 3 ammunition? 4 A Was it in my opinion that he was firing 5 factory -- 6 Q Yes. 7 A -- compliant? 8 Q Yes. 9 A Yes. 10 Q So why did it cross your mind to alter or 11 vary the amount of propellant in these rounds that 12 you loaded? 13 A Well, when I'm evaluating our test rifle, I'm 14 shooting a low amount of propellant to start off 15 with, and then I'm increasing it, watching to see if 16 anything occurs that might indicate the rifle is not 17 safe to fire, up to a full load. 18 Q Did you experience any squib loads? 19 A No. 20 Q Why did you choose the 1680 propellant? 21 A That's a common propellant used in 300 22 Blackout. 23 Q Was anyone present when you conducted the 24 test-firing? 25 A No.</p>	<p style="text-align: right;">Page 96</p> <p>1 for in our notice. Do you have any of the components 2 that you used to reload this test ammunition in March 3 of 2017? 4 A Sure. 5 Q Is it here with you? 6 A No. This isn't a test. This is just 7 evaluating the exemplar rifle to see if it could be 8 used. 9 Q Well, looking at <u>Exhibit 1</u> again, Mr. Powell, 10 numbers 26 and 27, 26 asks for, "Any and all 11 ammunition reloaded by Deponent." That's you. "Or 12 at his request, on his behalf, or under his 13 supervision in connection with Deponent's involvement 14 in the Batts Lawsuit, including but not limited to 15 that ammunition referred to in SSEC's invoice for 16 March 3, 2017." 17 26 asks for, "Any and all ammunition 18 cartridges, primers, and propellant acquired, 19 reviewed, used, or considered by Deponent in 20 connection with his involvement in the Batts Lawsuit, 21 including but not limited to such items referred to 22 in SSEC's invoice for March 3 of 2017." And you're 23 telling me that none of the reloaded ammunition or 24 any of the components are with you today? 25 A I have no -- I have none of the ammunition.</p>

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<p style="text-align: right;">Page 97</p> <p>1 All the ammunition was fired. 2 Do I have cartridges, primer and propellant? 3 I do have those and bullets and their boxes and cans, 4 but you're right. I forgot to bring those. 5 Q How did you fire this ammunition when you 6 were testing it to see if the exemplar was safe to 7 fire? 8 A I chambered around and pulled the trigger. 9 Cocked it and pulled the trigger. 10 Q If you were trying to determine if it was 11 safe, why would you not activate the trigger 12 remotely? 13 A Because I'm starting off with a very low 14 load. 15 Q Did you pull -- physically pull the trigger 16 with each of these test-firings? 17 A Yes. 18 Q But this was -- you were trying to determine 19 if it was safe to fire; right? 20 A Sure. So I evaluate the cases and the 21 primers and evaluate the behavior of the firearm as I 22 test-fired. 23 Q And I think you told me that you did not have 24 a squib load during this test-firing. 25 A No.</p>	<p style="text-align: right;">Page 99</p> <p>1 A To evaluate the rifle and the ammunition, 2 making measurements. 3 Q To evaluate the rifle, meaning what? 4 A Meaning looking -- looking at the components 5 of the rifle and determining whether or not, again, 6 if my test-firing showed anything unusual about the 7 exemplar rifle. 8 Q When you say "Prepare for testing" here on 9 April 25, you're referring to testing of the exemplar 10 rifle? 11 A Yes. 12 Q Which is what -- but hadn't you already 13 test-fired it six weeks or so earlier? Seven weeks 14 earlier? 15 A Right. I don't think it was seven weeks. I 16 think it was a month before. 17 Q March 3 to April 29 -- April 25. I'm sorry. 18 A Right. So a month later, yes. 19 Q So your next entry from April 25 is not until 20 May 19, almost a month later. 21 A Correct. And there, I think I'm measuring 22 the exem -- the subject rifle. 23 Q And ammunition? 24 A Yes. 25 Q The test-firing that you did with the</p>
<p style="text-align: right;">Page 98</p> <p>1 Q Was anyone with you? Did I ask you that? 2 A You did, but no one was with me. 3 Q Is there any other examinations, inspections 4 or testing that you've done in this case for which 5 you have no records? 6 A You know, I don't know of any testing that 7 I've done in this case that I have no records. I've 8 brought everything. I would not have considered this 9 testing, but just simply evaluation of the exemplar 10 firearm to see if I can use it in tests. 11 Q Did you photograph or video the testing? I 12 know you don't have photographs or video now, but did 13 you photograph or video the test-firing that you were 14 doing? 15 A No. I just went out to see if this was -- 16 this was a rifle. If I felt that it was behaving 17 abnormally, I would have not used it and gotten a 18 different exemplar. 19 Q Let's finish the invoice and we'll go to 20 lunch. On April 25, 2017 -- 21 A Which page are you on? 22 Q This is on page 83. 23 A 83. 24 Q You billed an hour for "Prepare for testing." 25 What testing were you preparing for?</p>	<p style="text-align: right;">Page 100</p> <p>1 exemplar, that was or was not testing in connection 2 with your work in this case? 3 A It's not testing. It's evaluation of the 4 exemplar rifle to see if it can be used in testing. 5 Q Okay. So test-firing of the rifle was not 6 testing, but visual examination and measurement of 7 parts of the rifle was testing? 8 A We're talking about apples and oranges. 9 We're talking about test evaluation of a defective 10 rifle versus test-firing of an exemplar rifle to see 11 if it can be used in this testing. 12 Q You were speaking of an evaluation and 13 measurements of something you considered to be 14 defective before you even analyzed it, didn't you? 15 Isn't that the case? 16 A No. We had seen the lack of engagement 17 between the barrel latch and the barrel lug. I think 18 by that time we'd already examined the radiographs, 19 if I'm not mistaken. Yeah. 20 Q Yeah, the radiographs were in December of 21 '16. 22 A So we already suspected that there was 23 something defective about the rifle because it had 24 low engagement. 25 Q So based on the radiographs alone, it was</p>

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<p style="text-align: right;">Page 101</p> <p>1 your working assumption that the rifle was defective? 2 A Yeah, because the engagement was inadequate. 3 Q Okay. And was it your working assumption, 4 based on the radiographs alone, that it was defective 5 and therefore unreasonably dangerous? 6 A Well, based on all the other work that was 7 done in the case, I came to those conclusions, that's 8 correct. 9 Q But in December of 2015, had you arrived at 10 the conclusion that the load engagement was an 11 unreasonably dangerous condition? 12 A If that low engagement was as a result of 13 manufacture, yes, I told Mr. Meador that I thought 14 that's what the case was, but we needed to do more 15 evaluation to confirm that. 16 Q Go to page 91, Mr. Powell. I've highlighted 17 a couple of dates -- or a few dates there. Do you 18 see that? 19 A I do. 20 Q January 4 of '19, you have five hours for 21 reviewing file materials, take photographs and 22 photomicrographs; correct? 23 A Yes. 24 Q And I know that you were getting ready to 25 submit your initial report. Is January 4th of 2019</p>	<p style="text-align: right;">Page 103</p> <p>1 A Okay. Well, then that's not what we're 2 talking about then. 3 VIDEOGRAPHER: 10 minutes. 4 THE WITNESS: I'm not sure what the testing 5 is that we're discussing there. 6 Q (By Mr. Danekas) Well, four days later, you 7 have a, "Telephone conversation with Mr. Meador 8 regarding cancellation of testing scheduled for this 9 week." Do you have any recollection of what testing 10 you discussed with Mr. Meador in January of '19 that 11 apparently was canceled? 12 A No. 13 Q It is true, is it not, that the only 14 test-firing of any rifle you did in this case prior 15 to your January report was the testing of the 16 exemplar for which you have no records, no 17 photographs, no videos? 18 A That, I do not consider testing. That is 19 evaluation of that. 20 Q Okay. 21 A And I think -- I think, looking at this and 22 my other tests, maybe the examination of the subject 23 rifle by Mr. Watkins is what we were discussing on 24 the 24th and 28th of January in 2019 if that -- if 25 that testing had been canceled for some reason.</p>
<p style="text-align: right;">Page 102</p> <p>1 the first time you took any photomicrographs? 2 A I don't know. I'd have to go -- go through 3 my list and see. 4 Q And on January 13 and 14, seven hours each 5 day you worked on your report; correct? 6 A Correct. 7 Q January 24th of 2019, you billed for a 8 telephone conference with Mr. Meador regarding 9 testing. Do you see that? 10 A I do. 11 Q What testing did you discuss with Mr. Meador 12 on January 24, 2019? 13 A The testing I had done in the case. 14 Q What was that? 15 A Everything that had been placed into my 16 report. 17 Q Okay. So any -- what you consider to be 18 testing would have been included in your first 19 report? 20 A Well, everything that I included in testing, 21 absent the range-testing, yes, is in my first report. 22 I don't know what the time frame was. We may 23 have been talking about testing insofar as -- when 24 was the CAT scans done? 25 Q November of 2017.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q You're referring to -- 2 A The March examination by Mr. Watkins, where 3 -- 4 Q You two eventually connected on March 26th at 5 what time -- at which time he removed the bullet from 6 the barrel? 7 A Yeah. I think that was scheduled earlier. 8 Q Okay. 9 A And was canceled, and we did that later. 10 Q All right. It is true, though, that in 11 connection with this case, you had done no 12 test-firing of any rifle prior to your January 2019 13 report? 14 A That's correct. 15 Q And it is true that as of today, the only 16 test-firing you have done of any rifle in connection 17 with this case was the range-firing you did in May 18 about -- with the exemplar involving the application 19 of oil? 20 A Correct. 21 (Reporter interruption) 22 THE WITNESS: Oil. 23 MR. DANEKAS: Application of oil. He's 24 almost done, and let's take a short lunch break? How 25 about 1:30?</p>

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<p style="text-align: right;">Page 105</p> <p>1 MR. CHANEY: That works.</p> <p>2 THE WITNESS: Approximately.</p> <p>3 VIDEOGRAPHER: Off the record at 12:51.</p> <p>4 (Lunch recess held)</p> <p>5 VIDEOGRAPHER: We're back on the record at</p> <p>6 1:35.</p> <p>7 Q (By Mr. Danekas) Mr. Powell, as I understand</p> <p>8 it, after receiving and reviewing the recovered video</p> <p>9 showing Mr. Batts experiencing a squib load with the</p> <p>10 first round he fired from his rifle, you decided that</p> <p>11 you needed to do some testing with your exemplar</p> <p>12 rifle; is that correct?</p> <p>13 A Yes.</p> <p>14 Q Had you considered doing any test-firing with</p> <p>15 your exemplar rifle prior to May of 2019?</p> <p>16 A Not based on the physical evidence that I had</p> <p>17 detected in the subject rifle, no.</p> <p>18 Q Okay. Then why was it necessary in your mind</p> <p>19 in March of 2017 to fire the exemplar rifle to</p> <p>20 determine if it was safe to fire if you weren't</p> <p>21 intending to fire it?</p> <p>22 A Well, I wanted to see if there was the</p> <p>23 potential, if I needed to fire it, that I could. You</p> <p>24 know, we're trying to evaluate a rifle that has</p> <p>25 certain characteristics in it and created certain</p>	<p style="text-align: right;">Page 107</p> <p>1 A Yes.</p> <p>2 Q -- under "208 grain." And the last powder or</p> <p>3 propellant listed there is Accurate 1680. Do you see</p> <p>4 that?</p> <p>5 A I do.</p> <p>6 Q Is this the document that you used to</p> <p>7 determine that you should be loading your test shells</p> <p>8 with 1680 propellant?</p> <p>9 A This and others, yes.</p> <p>10 Q Was Accurate 1680 the only propellant that</p> <p>11 you used?</p> <p>12 A Yes.</p> <p>13 Q Go to page 34. This is part of the</p> <p>14 "Reloading Handbook, 50th Edition" that you have in</p> <p>15 your materials; correct?</p> <p>16 A Correct.</p> <p>17 Q And down below, in the box, there is a</p> <p>18 warning. Do you see that?</p> <p>19 A I do.</p> <p>20 MR. CHANEY: I'm sorry, Steve. What page are</p> <p>21 you at?</p> <p>22 MR. DANEKAS: Page 34, Bob.</p> <p>23 Q (By Mr. Danekas) The last two paragraphs</p> <p>24 there read, "The individual assumes all risks for the</p> <p>25 safety of reloaded ammunition. Improperly loaded</p>
<p style="text-align: right;">Page 106</p> <p>1 pieces of evidence when it fired and injured</p> <p>2 Mr. Batts; and based upon my testing and evaluation</p> <p>3 of that evidence, I didn't feel it was necessary to</p> <p>4 go ahead and fire that exemplar rifle; but</p> <p>5 ultimately, it was determined I needed to, and it was</p> <p>6 ready to go.</p> <p>7 Q So on your invoice for March of 2017 when you</p> <p>8 state "Test of exemplar rifle," you really meant to</p> <p>9 say "Evaluate exemplar rifle"?</p> <p>10 A Well, I abbreviated what I did; but yes, in</p> <p>11 essence evaluating that rifle to see if I'm going to</p> <p>12 use it in any kind of testing, and it just -- the</p> <p>13 word "test" just got into the invoice.</p> <p>14 Q Having had the lunch break to reflect on it,</p> <p>15 do you have any explanation as to why your entry for</p> <p>16 testing the exemplar rifle with ammunition that you</p> <p>17 loaded yourself is on the invoice two days before you</p> <p>18 had billed for actually reloading the test</p> <p>19 ammunition?</p> <p>20 A No.</p> <p>21 Q While we have <u>Exhibit 8</u> out, turn to Bates</p> <p>22 page 23. I've highlighted a couple of these things</p> <p>23 for you so we can get to them quickly.</p> <p>24 Is the chart at the top -- I've highlighted</p> <p>25 the word "Powder" there --</p>	<p style="text-align: right;">Page 108</p> <p>1 ammunition, or the failure to follow all necessary</p> <p>2 precautions, may result in serious personal injury</p> <p>3 and/or death to the shooter or bystanders. There are</p> <p>4 many precautions to which the reloader need adhere."</p> <p>5 Did I read all that correctly?</p> <p>6 A You did.</p> <p>7 Q Do you agree with those statements there?</p> <p>8 A I do.</p> <p>9 Q Do you agree with the statement that one</p> <p>10 should not use ammunition if the person does not know</p> <p>11 the source of the ammunition?</p> <p>12 A Yes, I personally do, yes.</p> <p>13 Q I'm sorry?</p> <p>14 A I personally do, yes.</p> <p>15 Q Moving up to page 51, this is notes from --</p> <p>16 it looks like it's dated November 28th of 2017. Do</p> <p>17 you see that in the upper right-hand corner?</p> <p>18 A Yes.</p> <p>19 Q This is the day you were at North Star in</p> <p>20 Minnesota?</p> <p>21 A Uh-huh, yes.</p> <p>22 Q I have highlighted over in the left column</p> <p>23 some writing there; and if I'm reading your writing</p> <p>24 correctly you wrote, "Noted on second set of images</p> <p>25 of subject rifle, fire control latch is only</p>

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<p style="text-align: right;">Page 109</p> <p>1 partially engaged still. It may be, quote, more, 2 close quote, engaged than when I radiographed it."</p> <p>3 Did I read that correctly?</p> <p>4 A Yes, except it says -- the first -- third 5 word in there is -- I think -- I can't remember if 6 you said -- but it's supposed to say, "2D." "Noted 7 on 2D set of images." I don't think you read the 2D 8 as that.</p> <p>9 Q Okay. As in two-dimensional?</p> <p>10 A Yes.</p> <p>11 Q Okay. Was the 2D images of the subject rifle 12 performed after the CT, the 3D CT?</p> <p>13 A They were all performed -- oh, that's a good 14 question. I think they were probably done after the 15 CT.</p> <p>16 Q What are you referring to where you're 17 saying, "It appears that there was" -- that it was, 18 quote, "more engaged than when I radiographed it"?</p> <p>19 A I radiographed it approximately a year 20 earlier. I can't remember the exact dates, but it 21 was my visual evaluation of the 2D setup and images 22 that it looked like the engagement may be more than 23 what I had seen in my radiographs earlier.</p> <p>24 Q You took possession of the Batts rifle in 25 February of 2016.</p>	<p style="text-align: right;">Page 111</p> <p>1 radiograph, and I pushed it down to see and then 2 closed it back.</p> <p>3 Q When did you take -- first take any 4 photographs of the Batts rifle?</p> <p>5 A Well, I don't see any photographs here. 6 Let's look at the contact sheets. Yeah, here we go. 7 It looks like November 28th, 2017.</p> <p>8 Q Which was at North Star; correct?</p> <p>9 A Well, that's what I'm looking to see. Is 10 that the North Star -- I surely took some earlier 11 than that.</p> <p>12 That's all I see.</p> <p>13 Q When you say, "That's all I see," you're 14 referring to the photographs from November --</p> <p>15 A I'm --</p> <p>16 Q -- of '17?</p> <p>17 A I'm looking at the dates the photographs were 18 taken in my file.</p> <p>19 Q Uh-huh.</p> <p>20 A And I'm looking for images earlier than 2017, 21 and those are the earliest images I see.</p> <p>22 Q So you had the Batts rifle for roughly 21 23 months before you took any photographs of it; is that 24 correct?</p> <p>25 A Correct.</p>
<p style="text-align: right;">Page 110</p> <p>1 A Correct.</p> <p>2 Q Between February of 2016 when you first took 3 possession of it until the exam at North Star in 4 November of 2017, the rifle remained in your 5 possession?</p> <p>6 A Yes.</p> <p>7 Q Correct?</p> <p>8 A Yes, that's correct.</p> <p>9 Q And how many times did you open and close the 10 action on the Batts rifle during that time period?</p> <p>11 A Once.</p> <p>12 Q When?</p> <p>13 A I think I made a note of it. Let's see.</p> <p>14 Well, I don't see that note at this time.</p> <p>15 It's my recollection that I opened it once and then 16 closed it and then left it that way so we could 17 radiograph it, and then I just simply left it in that 18 same condition as when I radiographed it until it was 19 CAT-scanned.</p> <p>20 Q For what purpose did you open the action and 21 then close it?</p> <p>22 A I don't know. I think I was looking at the 23 movement of the actuating lever for the latch 24 mechanism. It appeared to be below, that it wasn't 25 fully engaging, and that's what it showed on the</p>	<p style="text-align: right;">Page 112</p> <p>1 Q Page 57 on <u>Exhibit 8</u>, I have highlighted in 2 the margin there. I just couldn't quite make out 3 what you wrote in the margin of that note, in the 4 margin of that piece of paper I should say.</p> <p>5 A This is in Batts Powell 57? Is that what 6 you're asking?</p> <p>7 Q Yes.</p> <p>8 A Is that the correct page?</p> <p>9 Q Yes.</p> <p>10 A Well, it says, "Fired LC 13 plus primer. 11 95.7 grain."</p> <p>12 Q What is that referring to?</p> <p>13 A I have no idea.</p> <p>14 Q At the bottom of that page, I've got a green 15 dot toward the bottom. What is that section of that 16 page below the line? What does that refer to?</p> <p>17 A It looks like I'm trying to determine what 18 the weight of the WCC 10 cartridge might include and 19 what weight bullets might be on that particular 20 cartridge.</p> <p>21 Q Going to page 61 of <u>Exhibit 8</u>. You have a 22 drawing there --</p> <p>23 A Okay. I just recalled. You were asking 24 about what I had put into the margin on Powell 57.</p> <p>25 Q Page 57 of this exhibit?</p>

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<p style="text-align: right;">Page 113</p> <p>1 A Uh-huh. 2 Q Yes. 3 A I pulled an LC 13 cartridge case from one of 4 the bags of cases I had saved to handload, and I 5 weighed it so I could get an estimate of what the 6 cartridge case and the primer would weigh, and it's 7 95.7 grains. 8 Q Going to page 61, you have a drawing of what 9 appears to be the barrel lug of your exemplar rifle; 10 is that correct? 11 A Yes. 12 Q And on the right end of that barrel lug, you 13 have drawn a line, and does that say, "Worn coating"? 14 A Yes. 15 Q W-O-R-N? 16 A Yes. 17 Q And what's the arrow to the rest of it, where 18 you've got written below? Something "in coating." 19 What does that say? 20 A "Lines," L-I-N-E-S, "in coating. 21 Intermittent contact." 22 Q What does that mean? 23 A That means that there are longitudinal 24 markings in the engagement length on the exemplar 25 rifle.</p>	<p style="text-align: right;">Page 115</p> <p>1 Q I didn't either. 2 A So ultimately I made the measurement on the 3 -- through the viewport. 4 Q Through the? 5 A Viewport. 6 Q Viewport. But that measurement through the 7 viewport wasn't the contact. It was the overlap, was 8 it not? 9 A Well, the contact is just -- are markings 10 that are present on there, and the overlap is how 11 much engagement is actually present. So that's what 12 we were interested in showing, as well as on the 13 subject rifle. 14 (Reporter interruption) 15 THE WITNESS: The subject rifle. 16 Q (By Mr. Danekas) Is the evidence of contact 17 by the marks on the surfaces important? 18 A Yes. 19 Q Why? 20 A Well, they are just more evidence of the 21 amount of engagement between the two components. 22 Q But it's -- but contact does not equate to 23 engagement. 24 A Well, contact is where the two surfaces are 25 touching.</p>
<p style="text-align: right;">Page 114</p> <p>1 Q Well, let's talk about terminology again. 2 You have used the word "intermittent contact," using 3 the word "contact" here, and I think you told me 4 earlier that that does not equate with engagement; 5 correct? 6 A Correct. 7 Q So are you referring to contact here or 8 engagement? 9 A Contact. It's where the markings of the -- 10 of the latch have been making marks on the barrel 11 lug. 12 Q You would agree that you can determine the 13 length of engagement between the surfaces by the wear 14 marks on the respective surfaces; correct? 15 A Yeah. What that length of engagement could 16 be, yes. 17 Q But you've not measured -- you've not 18 measured the width of these contact surfaces on your 19 exemplar, I think you told us; is that correct? 20 A I think I did at some point, yes. 21 Q Where is that? 22 A Well, I don't see the pictures here. It was 23 my recollection that I had taken microscopic 24 photographs of the exemplar lugs and measured them on 25 a microscope, but I don't see that data here.</p>	<p style="text-align: right;">Page 116</p> <p>1 Q Right. 2 A And engagement is what determines the action 3 of the latch to hold the barrel down. 4 Q Let's go to page 69 of this exhibit. At the 5 bottom of the page, there is an e-mail from 6 Mr. Meador to you dated March 29, 2016, and this is a 7 month or so after you first got involved in the case; 8 correct? 9 A Yes. 10 Q And Mr. Meador writes, "Sergeant Batts 11 indicated that the attached photo shows the type of 12 projectile and the rounds he was firing at the time 13 of the rifle failure. He indicated that he pulled 14 one of the ballistic tip rounds and found a bullet 15 weight of around 200 grains with 9 grains of powder 16 in the subsonic round." Did I read that correctly? 17 A You did. 18 Q Do you know why he, Mr. Meador, sent you this 19 e-mail? 20 A I think I had asked him what bullet that 21 particular ammunition was loaded with, and I 22 disagreed with his assessment that it was an ELD-X 23 bullet. 24 Q Did you inquire as to what round Mr. Batts 25 had pulled?</p>

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<p style="text-align: right;">Page 117</p> <p>1 A No.</p> <p>2 Q Do you know to this day the source of the 3 round that Mr. Batts had pulled the round out of?</p> <p>4 A I do not.</p> <p>5 Well, I think you see some of our 6 conversations in this same e-mail, where I'd asked -- 7 I told him the ELD bullets are a relatively new 8 bullet design, and my conversation with him was about 9 I didn't think they were ELD bullets.</p> <p>10 Q Has anyone ever told you that Mr. Batts 11 reloaded the rounds that were -- he was using on the 12 day of the incident?</p> <p>13 A No.</p> <p>14 Q When you took possession of the rifle and the 15 rounds and the SD card, did you fill out any sort of 16 intake form for that?</p> <p>17 A No.</p> <p>18 Q Do you usually?</p> <p>19 A I think there would have been a receipt that 20 was -- that was done. Yes, I usually do a receipt, 21 an evidence transfer receipt.</p> <p>22 Q I see you did an evidence transfer receipt in 23 February of 2019 when you conveyed the materials back 24 to Mr. Meador for purposes of Mr. Batts' deposition, 25 but what I didn't see is any evidence of your receipt</p>	<p style="text-align: right;">Page 119</p> <p>1 Mr. Meador was 42 seconds long, and the one I 2 downloaded off of the SD card was much longer. Five 3 minutes and one second.</p> <p>4 Q You received the SD card at the same time you 5 received the rifle and the ammunition; correct?</p> <p>6 A Correct.</p> <p>7 Q And you put the SD card in your computer and 8 downloaded the incident video; correct?</p> <p>9 A Correct.</p> <p>10 Q How did you know, again, which video to 11 download from the SD card?</p> <p>12 A When I downloaded -- when I pushed the SD 13 card into the computer, it shows pictures of what's 14 present on the SD card, and I downloaded the one that 15 matched up to the video that I'd been sent.</p> <p>16 Q Including a -- what do they call those? A 17 photo? A frame of the video?</p> <p>18 A Yeah, whatever the icon is that Windows 19 shows.</p> <p>20 Q And you watched the entire five minute and 21 one second?</p> <p>22 A I did. I watched that a couple of times, but 23 the last part of it is related to what happened after 24 he was injured, and so I haven't paid a lot of 25 attention to that.</p>
<p style="text-align: right;">Page 118</p> <p>1 of the evidence in February of '16.</p> <p>2 A Yeah. I didn't see one either.</p> <p>3 Q When did you first view the video of the 4 incident?</p> <p>5 A It was very early on in the case so in 2016 6 -- let's get the invoice here. It would have been in 7 the first part of February 2016.</p> <p>8 Q And you received that via e-mail from 9 Mr. Meador?</p> <p>10 A I did.</p> <p>11 Q Was that the entire video?</p> <p>12 A It's the entire video he sent me, yes.</p> <p>13 Q Well, you later got the SD card.</p> <p>14 A Correct. I think --</p> <p>15 Q Prior to getting the SD card, you had already 16 seen a video; correct?</p> <p>17 A Correct.</p> <p>18 Q Was there any difference in the two videos?</p> <p>19 A Not that I recall, no.</p> <p>20 Q And how long was the video that you were 21 provided?</p> <p>22 A How many minutes? I don't know. I can look 23 real quick if you like.</p> <p>24 Q Sure.</p> <p>25 A It looks like the one I received from</p>	<p style="text-align: right;">Page 120</p> <p>1 Q How many times have you watched the entire 2 video?</p> <p>3 A I have no idea. Maybe -- the part where he 4 was injured, maybe 20 times, something like that.</p> <p>5 Q How many times have you watched the entire 6 video?</p> <p>7 A Once or twice.</p> <p>8 Q When is the last time you watched the entire 9 video?</p> <p>10 A I don't know.</p> <p>11 Q What is your understanding of the number of 12 bags that Mr. Batts took to the range on the day of 13 the incident?</p> <p>14 A I don't recall.</p> <p>15 Q Do you know how many bags are shown on the 16 video?</p> <p>17 A Not offhand, no.</p> <p>18 Q How many shots did Mr. Batts fire from the 19 H&R rifle that day?</p> <p>20 A Three.</p> <p>21 Q Mr. Batts testified that he did not record 22 the first shot. Do you remember that?</p> <p>23 A Let me look at his -- my notes.</p> <p>24 On page 56 of his deposition he says he took 25 20 rounds of 300 Blackout to the range on the date of</p>

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<p style="text-align: right;">Page 121</p> <p>1 the injury, fired two, and then the incident. Three 2 rounds fired in total.</p> <p>3 Q You're looking at the notes of his 4 deposition?</p> <p>5 A Notes that I took while reading his 6 deposition, yes.</p> <p>7 Q Do you have his deposition with you today?</p> <p>8 A I do. I have it up right now.</p> <p>9 Q Okay. Page 57, lines 3 to 5.</p> <p>10 A Okay. Page 57, I'm there.</p> <p>11 Q Lines 3 to 5.</p> <p>12 A Yes.</p> <p>13 Q He says he did not record the first shot he 14 took with the rifle; correct?</p> <p>15 A It says, "QUESTION: Did you fire a round out 16 of this rifle before you started video-recording 17 shooting this rifle?"</p> <p>18 The answer is, "Yes, sir."</p> <p>19 Q We know now from the recovered video that he 20 did in fact record that first round.</p> <p>21 A Yes.</p> <p>22 Q What in Mr. Batts' deposition did he say he 23 did after he fired the first round from the H&R 24 rifle? Page 80.</p> <p>25 A Okay. I'm at page 80.</p>	<p style="text-align: right;">Page 123</p> <p>1 Q In his deposition, Mr. Batts said the first 2 two rounds fired normally, did he not?</p> <p>3 A Do you have that on there? I don't have 4 that.</p> <p>5 Q Page 79, lines 17 to 19.</p> <p>6 A Correct.</p> <p>7 Q Would you agree that the first round he fired 8 did not fire normally?</p> <p>9 A Yes.</p> <p>10 Q Mr. Batts at his deposition said that the 11 recoil from the first round and the second round was 12 the same. Page 101, lines 17 to 21.</p> <p>13 A Yes, he said that.</p> <p>14 Q Do you agree that, viewing the recovered 15 video, as well as the video of the incident, that the 16 recoil from the first shot and the second shot was 17 not the same?</p> <p>18 A I would agree with that, yes.</p> <p>19 Q Mr. Batts said in his deposition that he had 20 never experienced a squib load. Do you remember that 21 testimony?</p> <p>22 A I do not.</p> <p>23 Q Page 19, 6 through 13.</p> <p>24 A Yes, he says that.</p> <p>25 Q You agree -- I think you mentioned this in</p>
<p style="text-align: right;">Page 122</p> <p>1 Q Lines 3 to 12.</p> <p>2 A Line -- do you want me to read it into the 3 record?</p> <p>4 Q No, you don't to read it into the record.</p> <p>5 Just read it to yourself.</p> <p>6 A Okay.</p> <p>7 Q Mr. Batts said after he fired the first round 8 at 75 yards, the range went cold. He went and 9 inspected the target, saw that the round had hit 10 behind the target; is that correct?</p> <p>11 A Yes.</p> <p>12 Q From looking at the recovered video, do you 13 agree that Mr. Batts did not go down-range after the 14 first shot, and obviously the first round never hit 15 behind the target because it never exited the rifle. 16 Would you agree with that?</p> <p>17 A I do.</p> <p>18 Q How many times have you watched the recovered 19 video, the video of the first shot?</p> <p>20 A Somewhere in the 10- to 20-time area.</p> <p>21 Q When was the last time?</p> <p>22 A I looked at it probably in early May, right 23 after I received it.</p> <p>24 Q That's the last time you looked at it?</p> <p>25 A Uh-huh. Yes.</p>	<p style="text-align: right;">Page 124</p> <p>1 your supplementary report -- that the recovered video 2 shows that he experienced the squib load with the 3 first round he fired?</p> <p>4 A I agreed that that's correct.</p> <p>5 Q Mr. Batts said in his deposition he did not 6 use any lubricant. Page 94, 9 through 11.</p> <p>7 A Yes, I read he says, "Had you used any of 8 that lubricant," referring to CLP, "on the H&R rifle 9 that day?" And he said, "No, sir."</p> <p>10 Q And we know from the recovery video that he 11 did use some?</p> <p>12 A Yes.</p> <p>13 Q That's what prompted your testing in May?</p> <p>14 A Correct.</p> <p>15 Q Have you inquired of anybody about the 16 differences between Mr. Batts' testimony and what is 17 shown by other evidence in this case?</p> <p>18 A I told my client that his testimony is 19 different than what the evidence was in this case.</p> <p>20 Q Okay. Is that important to you?</p> <p>21 A Well, I'm working and testifying onto the 22 physical case in the case irrespective of what 23 Mr. Batts says.</p> <p>24 Q Is that what you usually do in a case, 25 Mr. Powell? You rely on the physical evidence more</p>

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<p>1 so than the testimony of the shooter?</p> <p>2 A I rely on all of it.</p> <p>3 Q Okay.</p> <p>4 A And if it conflicts, I try to look at it and determine which I think is correct.</p> <p>6 Q Would you agree that physical evidence trumps</p> <p>7 testimony?</p> <p>8 A Physical evidence is something I can evaluate, whereas testimony is what somebody is saying. So I'm not saying it trumps it, but I'm saying that they are both considered when you're evaluating a particular piece of evidence.</p> <p>13 Q Well, you've been involved in a lot of</p> <p>14 firearms cases; correct?</p> <p>15 A Correct.</p> <p>16 Q Many of them, most of them, have involved</p> <p>17 claims of accidental discharges; correct?</p> <p>18 A A lot of them have, yes.</p> <p>19 Q And there is testimony given by the person</p> <p>20 handling the rifle, whether that's the plaintiff or</p> <p>21 someone else; correct?</p> <p>22 A Correct.</p> <p>23 Q And occasionally, based on your examination</p> <p>24 of all the evidence in those cases, in the physical</p> <p>25 evidence you conclude sometimes that the gun handler</p>	<p>1 for the incident; correct?</p> <p>2 A I try not to make those kind of characterizations on it.</p> <p>4 Q But if you find in a case where the physical</p> <p>5 evidence, in your analysis of the case, cannot match</p> <p>6 the testimony of the gun handler, you rely on your</p> <p>7 analysis and what the physical evidence shows, do you</p> <p>8 not?</p> <p>9 A Typically, yes.</p> <p>10 Q Have you made -- we talked about the red box</p> <p>11 that was marked at Mr. Batts' deposition and, when</p> <p>12 first presented to you, had seven polymer-tip rounds</p> <p>13 and two hollow-tip rounds; right?</p> <p>14 A Correct.</p> <p>15 Q And I think you just alluded to some</p> <p>16 testimony by Mr. Batts that he said that he took 20</p> <p>17 rounds of ammo -- of 300 Blackout ammunition to the</p> <p>18 range that day.</p> <p>19 A That's what he say -- he said in his deposition. That's correct.</p> <p>21 Q And do you recall that he said there were 10</p> <p>22 rounds of polymer tip and 10 rounds of hollow points?</p> <p>23 A Without looking at them, I think that's correct.</p> <p>25 Q All right. And do you remember that he said</p>
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<p>1 has not testified accurately; correct?</p> <p>2 A Correct, in both ways. Sometimes he has testified accurately.</p> <p>4 Q I understand. But based on your experience,</p> <p>5 there are cases where a gun handler's testimony is</p> <p>6 not accurate, not true; correct?</p> <p>7 A Correct. Well, and to be fair, it's not just the gun handler, but sometimes police officers and investigating officers and other people that write reports about this. That's correct.</p> <p>11 Q I understand. My question is with regard to</p> <p>12 the gun handler. In all the experience you've had,</p> <p>13 there are occasions where testimony of the gun</p> <p>14 handler does not match the rest of the evidence,</p> <p>15 including the physical evidence?</p> <p>16 A That's correct.</p> <p>17 Q And sometimes that gun handler is mistaken or</p> <p>18 forgetful?</p> <p>19 A It's different. That's -- I'm not going to try to put motives as to how people testify or why they -- whether they can't remember, whether they are trying to help out someone that's taking their deposition. I -- I just go by what they say.</p> <p>24 Q It's also a possibility that the gun handler</p> <p>25 is giving testimony to avoid accepting responsibility</p>	<p>1 he had them in a, what I'll call a light gray ammo</p> <p>2 box?</p> <p>3 A Yes.</p> <p>4 Q Do you recall that he testified that after he</p> <p>5 acquired these 20 rounds of 300 Blackout ammunition</p> <p>6 from the gun show, that he took them home, took them</p> <p>7 out of whatever container they were in and put them</p> <p>8 into this gray ammo box?</p> <p>9 A Again, I think that's correct. I don't recall specifically.</p> <p>11 Q We know, or at least the evidence suggests,</p> <p>12 that Mr. Batts fired three rounds of the polymer-tip</p> <p>13 bullets that day; correct?</p> <p>14 A He fired three rounds, that's correct.</p> <p>15 Q And his testimony was that they were all</p> <p>16 polymer-tipped?</p> <p>17 A Yes.</p> <p>18 Q So that would have left seven rounds of</p> <p>19 polymer-tip bullets?</p> <p>20 A Correct.</p> <p>21 Q And seven rounds were provided to you for</p> <p>22 examination in February of 2016?</p> <p>23 A Correct.</p> <p>24 Q There is no evidence, and he indicated I</p> <p>25 believe, that he did not fire any of the hollow-point</p>

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<p style="text-align: right;">Page 129</p> <p>1 rounds that day; correct?</p> <p>2 A I don't specifically recall.</p> <p>3 Q Do you recall his testimony that the gray</p> <p>4 ammo boxes disappeared after the day of the incident?</p> <p>5 A I don't -- I don't recall his testimony about</p> <p>6 them disappearing. I think he couldn't locate them.</p> <p>7 Q Have you made any inquiry, Mr. Powell,</p> <p>8 regarding -- well, let me back up. If we're</p> <p>9 conducting arithmetic, if you had 20 total rounds and</p> <p>10 he fired three, that leaves 17 rounds; right?</p> <p>11 A Yes.</p> <p>12 Q And you were provided with nine?</p> <p>13 A Correct.</p> <p>14 Q Have you made any inquiry as to what happened</p> <p>15 to the other eight?</p> <p>16 A No.</p> <p>17 Q Have you made any inquiry of what happened to</p> <p>18 the spent casings for the first two rounds?</p> <p>19 A Yes.</p> <p>20 Q What inquiry have you made?</p> <p>21 A I asked my client if he could provide those.</p> <p>22 Q And the answer was?</p> <p>23 A They don't exist.</p> <p>24 Q Did you ask what happened to them, why they</p> <p>25 don't exist?</p>	<p style="text-align: right;">Page 131</p> <p>1 Q Were you at all curious as to why it had been</p> <p>2 found at such a late date?</p> <p>3 A No. I was glad it was found; but other than</p> <p>4 curious as to why it was found at a later date and</p> <p>5 not earlier, I just get evidence as it comes to me.</p> <p>6 Q So you have no knowledge whatsoever of --</p> <p>7 from any source of why that video was not on the SD</p> <p>8 card when it was provided to you in February of '16?</p> <p>9 A I do not.</p> <p>10 Q Have you ever been told that Mr. Batts does</p> <p>11 not have a memory of the events leading up to and</p> <p>12 surrounding the incident?</p> <p>13 A The only thing I know about Mr. Batts is what</p> <p>14 he said in his deposition. I don't recall him saying</p> <p>15 that, but he was injured pretty severely, so he may</p> <p>16 not.</p> <p>17 Q Well, my question is: Have you ever been</p> <p>18 told by anybody that Mr. Batts does not have a memory</p> <p>19 of the events leading up to and surrounding the</p> <p>20 incident?</p> <p>21 A Oh, my client may have mentioned something</p> <p>22 about his memory in our -- just a general</p> <p>23 conversation; but again, I'm just relying on what he</p> <p>24 says in his deposition.</p> <p>25 Q Did he say in his deposition anywhere that he</p>
<p style="text-align: right;">Page 130</p> <p>1 A He said that his client couldn't find them.</p> <p>2 Q Why did you ask for them?</p> <p>3 A So I could evaluate them.</p> <p>4 Q And what would you have evaluated with regard</p> <p>5 to the spent cases for the first two rounds he fired?</p> <p>6 A The same thing you look at on all spent</p> <p>7 cases. You look at dimensional characteristics,</p> <p>8 primer characteristics and identification.</p> <p>9 Q Have you asked to see the -- have you asked</p> <p>10 to see the round that Mr. Batts apparently tore down,</p> <p>11 removed the bullet from?</p> <p>12 A I have not.</p> <p>13 Q Is that of any interest to you?</p> <p>14 A If he still has it, yes.</p> <p>15 Q Why would that be of interest to you?</p> <p>16 A To see if it's the same as those that he</p> <p>17 provided to me since he thinks it's a different</p> <p>18 bullet.</p> <p>19 Q Have you made any inquiry at all about why</p> <p>20 the recovered video was not on the SD card provided</p> <p>21 to you in February of 2016?</p> <p>22 A No. I don't know anything about the</p> <p>23 recovered video other than my client presented it to</p> <p>24 me and said that it was found on the subject chip, SD</p> <p>25 card.</p>	<p style="text-align: right;">Page 132</p> <p>1 did not have a memory of the events leading up to and</p> <p>2 surrounding the incident?</p> <p>3 A Not that I recall.</p> <p>4 Q Would you agree that he never lost</p> <p>5 consciousness?</p> <p>6 A Again, if it's in his deposition, that would</p> <p>7 be what I would know, but I don't know offhand.</p> <p>8 Q Were you contacted about the recovered video</p> <p>9 before you actually received it?</p> <p>10 A No.</p> <p>11 Q You received it via e-mail?</p> <p>12 A I did.</p> <p>13 Q Where is that e-mail?</p> <p>14 A I don't still have that e-mail.</p> <p>15 Q You deleted the e-mail?</p> <p>16 A Yes.</p> <p>17 Q Because I didn't see it in any of the</p> <p>18 materials provided.</p> <p>19 A No. I don't often keep e-mails.</p> <p>20 Q What did the e-mail say?</p> <p>21 A "Here is a video that was recovered from</p> <p>22 Mr. Batts' SD card."</p> <p>23 Q That was it?</p> <p>24 A That was it.</p> <p>25 Q You watched the video?</p>

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<p style="text-align: right;">Page 133</p> <p>1 A And I watched the video and called my client. 2 Q Okay. And what was the conversation you had 3 with Mr. Meador at that point? 4 A Told Mr. Meador that he had experienced a 5 squib load and that after the squib load he cleaned 6 his rifle and then put oil down the barrel. 7 Q And at no time then or thereafter, I guess, 8 did you ever inquire as to why this video was coming 9 to light so late in the process? 10 A No. 11 Q Weren't you a bit curious? 12 A No. I'm not generally curious about when I 13 get evidence. I just accept what's given to me. 14 Q With regard to the oil that Mr. Batts used 15 that you saw in the video, would the amount of the 16 oil matter? 17 A I think it matters to an extent, and I tried 18 to duplicate exactly what this did, and I probably 19 put more oil down the barrel than he did. 20 Q Do you have an opinion as to how long it 21 took, from the instant the firing pin struck the 22 primer, for the barrel lug to disengage fully from 23 the barrel catch? 24 A No. I haven't measured the time it took, the 25 milliseconds, the fractions of milliseconds it took</p>	<p style="text-align: right;">Page 135</p> <p>1 between the barrel lug and the latch to keep it from 2 opening. 3 Q Was that engagement any different than on the 4 third or incident round? 5 A It must have been because it didn't open on 6 that round. 7 Q Why did the action not open with the second 8 shot? 9 A Well, I thought you -- the first shot is the 10 squib load? 11 Q Yes. 12 A Okay. The squib load, it didn't open because 13 there was no pressure. 14 Q Let's go back so the record is clear. 15 A Okay. 16 Q We're talking about three shots. Number one 17 is the -- the first shot is the one on the recovered 18 video, the squib load. 19 A Okay. 20 Q Number two is the first shot shown on the 21 incident -- 22 A First shot with the oil in the barrel. 23 Q With the oil in the barrel. And the third 24 shot is the incident? 25 A Correct.</p>
<p style="text-align: right;">Page 134</p> <p>1 before it -- 2 Q Is that not -- 3 A -- disengaged. 4 Q Is that not important? 5 A No. 6 Q Do you have an opinion how long it was from 7 the time the firing pin first struck the primer to 8 when the action opened far enough to allow the 9 cartridge case to begin to propel rearward? 10 A No, I have no opinion. I have not made that 11 measurement. 12 Q And that is not important to you either? 13 A No, sir. No, sir, not as I sit here. 14 Q And I don't know if I asked you this question 15 earlier or not. Did the bullet move before the 16 action began to open? 17 A I don't know. I haven't made that 18 measurement. 19 Q If the bullet had exited the barrel, would 20 the incident have occurred? 21 A Possibly, but I don't know. I haven't made 22 that test. 23 Q Why did the action not open with his first 24 shot, the one depicted on the recovered video? 25 A There must have been sufficient engagement</p>	<p style="text-align: right;">Page 136</p> <p>1 Q Okay. With regard to the first shot, the 2 squib load shown on the recovered video, why did the 3 action not open? 4 A There was sufficient engagement between the 5 barrel lug and the latch, at the pressure that 6 cartridge had, to keep it from opening. 7 Q Why did the action not open with the second 8 shot? 9 A Again, there was sufficient engagement to 10 keep it from opening under the pressure of that 11 cartridge. 12 Q Was the pressure of that cartridge, the 13 second shot, any different than the pressure from the 14 third or incident round? 15 A They appear to be equivalent pressures. 16 Q Was the engagement of the barrel lug and the 17 barrel catch the same on the second round as it was 18 on the third or incident round? 19 A No. 20 Q So the engagement between the barrel catch 21 and the barrel lug varied, differed -- 22 A It would vary -- 23 Q -- between Round 2 and Round 3? 24 A It would vary every time he opened the barrel 25 to put a new cartridge in. It would change minutely.</p>

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<p>1 REPORTER: It would change?</p> <p>2 THE WITNESS: Minutely.</p> <p>3 Q (By Mr. Danekas) Okay. How do you know</p> <p>4 that?</p> <p>5 A Because that's -- that's the nature of that</p> <p>6 particular mechanism. It doesn't always return</p> <p>7 exactly to the same position.</p> <p>8 Q So then how do you know what the engagement</p> <p>9 was for the incident round?</p> <p>10 A I know it was low enough that it allowed the</p> <p>11 rifle action to open.</p> <p>12 Q What was the range of engagement for this</p> <p>13 rifle from Shot Number 1, the squib load, through</p> <p>14 Shot Number 3, the incident round?</p> <p>15 A I don't know. You can't tell.</p> <p>16 Q Did you not tell me earlier this morning that</p> <p>17 the engagement at the time of the incident was</p> <p>18 60/thousandths?</p> <p>19 A I told you I think that's the measurement I</p> <p>20 made when we CAT-scanned it, and that it appeared to</p> <p>21 be defective, and it was probably about at the</p> <p>22 engagement when that shot was fired.</p> <p>23 Q If reassembled, could the Batts rifle, the</p> <p>24 subject rifle, be fired?</p> <p>25 A Yes. Dangerously.</p>	<p>Page 137</p> <p>1 A I have no idea what's in his mind.</p> <p>2 Q If reassembled and test-fired, could</p> <p>3 Mr. Batts' rifle, the subject rifle, be tested to</p> <p>4 determine if the incident could be replicated?</p> <p>5 A You can attempt to replicate it with an</p> <p>6 exemplar rifle if you can get it to hold low</p> <p>7 engagements successfully without altering the rifle</p> <p>8 too much.</p> <p>9 Q Okay. But you did not do that with your</p> <p>10 exemplar; correct?</p> <p>11 A No. I didn't feel there was need to, and I</p> <p>12 wasn't sure how I was going to create a low</p> <p>13 engagement without adding complexities that would</p> <p>14 affect how the test would occur.</p> <p>15 Q If Mr. Meador would say to you, "Mr. Powell,</p> <p>16 we have to run a test-firing of your exemplar rifle</p> <p>17 to try to replicate the incident," how would you do</p> <p>18 it?</p> <p>19 A At this point, I don't know. I mean, the</p> <p>20 best way to do it would be to refit a new barrel such</p> <p>21 that the engagement is low.</p> <p>22 Q Can you think of any way to create reduced</p> <p>23 engagement in order to run such a test-firing?</p> <p>24 A Not at this time, other than what I just</p> <p>25 explained.</p>
<p>Page 138</p> <p>1 Q Well, you could take precautions, could you</p> <p>2 not?</p> <p>3 A Yes.</p> <p>4 Q As you did with your test -- your test-firing</p> <p>5 in May, you fired the rounds -- after you applied the</p> <p>6 oil, you fired those remotely with a cord or a</p> <p>7 string, did you not?</p> <p>8 A I did.</p> <p>9 Q So the subject rifle could be fired and it</p> <p>10 could be fired so as to protect those participating</p> <p>11 in that test-firing; correct?</p> <p>12 A Correct.</p> <p>13 Q Have you ever suggested to Mr. Meador or to</p> <p>14 anyone, for that matter, that the subject rifle be</p> <p>15 test-fired?</p> <p>16 A No.</p> <p>17 Q Why not?</p> <p>18 A Because it would change the characteristics</p> <p>19 and appearance of the different components.</p> <p>20 Q Which you have documented already; correct?</p> <p>21 A Correct, but Mr. Meador may want the option</p> <p>22 to take that rifle in front of a jury with a</p> <p>23 microscope and show them on a screen what those</p> <p>24 components look like.</p> <p>25 Q Has he said that to you?</p>	<p>Page 140</p> <p>1 Q Okay. Okay. Was there brass on the breech</p> <p>2 face?</p> <p>3 A Brass deposits?</p> <p>4 Q Yes.</p> <p>5 A Yes.</p> <p>6 Q That's a better question. Were there brass</p> <p>7 deposits on the breech face?</p> <p>8 A Yes. You're --</p> <p>9 MR. MEADOR: Which rifle?</p> <p>10 Q (By Mr. Danekas) Were there brass deposits</p> <p>11 on the breech face of Mr. Batts' rifle?</p> <p>12 A Yes, and the exemplar also.</p> <p>13 Q Were the brass deposits different on</p> <p>14 Mr. Batts' rifle than on your exemplar?</p> <p>15 A Not that I recall, no.</p> <p>16 Q The photos that you produced seem to indicate</p> <p>17 that the brass deposits on Mr. Batts' subject rifle</p> <p>18 ran up the length, if you will, of the breech face,</p> <p>19 whereas they were more centralized on your exemplar.</p> <p>20 A I don't specifically recall that.</p> <p>21 Q Can you take a look at your photos and tell</p> <p>22 me if what I just said is true or not true?</p> <p>23 A Sure.</p> <p>24 MR. DANEKAS: I'm going to give you a second</p> <p>25 to do that, and I'm going to run to the restroom. Go</p>

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<p>1 off for three minutes.</p> <p>2 VIDEOGRAPHER: Off the record at 2:30.</p> <p>3 (Recess held)</p> <p>4 VIDEOGRAPHER: We're back on the record at</p> <p>5 2:34.</p> <p>6 THE WITNESS: Wait a minute. Wait a minute.</p> <p>7 I went to the wrong thing here.</p> <p>8 I have a clear -- are we back on the record?</p> <p>9 VIDEOGRAPHER: Yes.</p> <p>10 MR. DANEKAS: Yeah.</p> <p>11 THE WITNESS: I have a clear view of the</p> <p>12 brass present on the breech face of the subject</p> <p>13 rifle. I can't quickly locate a clear view of the</p> <p>14 breech face of the exemplar rifle, after test-firing.</p> <p>15 Q (By Mr. Danekas) Do the brass deposits on</p> <p>16 the breech face on the subject rifle run up the</p> <p>17 length of the breech face?</p> <p>18 A Yes. They run -- it runs in a stripe</p> <p>19 basically, towards the top.</p> <p>20 Q Okay. What caused that?</p> <p>21 A Offhand, I don't know. That's where the</p> <p>22 brass deposits sprayed during the firing of the</p> <p>23 rifle.</p> <p>24 Q Did you ever take a cast of the chamber?</p> <p>25 A No.</p>	<p>Page 143</p> <p>1 invoice entry for it.</p> <p>2 A I don't recall having an entry for it, but on</p> <p>3 --</p> <p>4 Q Maybe I'm mis -- hold on. Let's see.</p> <p>5 A Okay.</p> <p>6 Q <u>Exhibit 8.</u></p> <p>7 A 8?</p> <p>8 Q 8. This is your -- a copy of your,</p> <p>9 quote/unquote, paper file, Bates numbered 81.</p> <p>10 A Oh. There we go.</p> <p>11 Q You have an entry for February 14th of 2017.</p> <p>12 A There it is, yes. That's when it was done.</p> <p>13 Q "Review file; disassemble exemplar rifle;</p> <p>14 have receiver machined; reassemble exemplar rifle;</p> <p>15 prepare for testing." Did I read that correctly?</p> <p>16 A You did.</p> <p>17 Q So is that -- February 14th is when you had</p> <p>18 the viewing hole enlarged for your exemplar rifle?</p> <p>19 A Yes.</p> <p>20 Q And then your entry there for February 14th</p> <p>21 of 2017, "Prepare for testing," again what are you</p> <p>22 referring to there?</p> <p>23 A Testing and seeing if the hole made any</p> <p>24 difference. Immediately after that, on March 1st, is</p> <p>25 when I did the evaluation of the rifle to see if it</p>
<p>Page 142</p> <p>1 Q Did you ever notice any silver-colored</p> <p>2 substance in and around the chamber?</p> <p>3 A No.</p> <p>4 Q Do you notice any carbon in the bore and at</p> <p>5 the heel of the bullet?</p> <p>6 A Of the subject rifle?</p> <p>7 Q Yes, sir. I'm talking about the bullet that</p> <p>8 -- the incident bullet that lodged in the barrel of</p> <p>9 the subject rifle.</p> <p>10 A There is some dark coloration on the bullet,</p> <p>11 but I don't know if it's carbon. There was a lot of</p> <p>12 oil that was used, so I don't know what that deposit</p> <p>13 is. But yes, there is some dark coloration on the</p> <p>14 bullet that was removed from the bore.</p> <p>15 Q Would that be consistent with a squib load?</p> <p>16 A Carbon? No. It's consistent with oil in the</p> <p>17 barrel.</p> <p>18 Q Other than the radiographs taken at North</p> <p>19 Star, have you had any radiographs or x-rays taken of</p> <p>20 the ammunition provided to you?</p> <p>21 A No. I don't have the capability to examine</p> <p>22 ammunition with a standard x-ray. It has to be a</p> <p>23 microfocus x-ray.</p> <p>24 Q When did you expand the viewing hole, if you</p> <p>25 will, in your exemplar? And I think you may have an</p>	<p>Page 144</p> <p>1 was still fine to shoot.</p> <p>2 Q So your entry on February 14th, "Prepare for</p> <p>3 testing," is really preparing for your evaluation --</p> <p>4 A That's correct.</p> <p>5 Q -- of the exemplar rifle to see if it was</p> <p>6 safe to shoot?</p> <p>7 A Correct.</p> <p>8 Q Do you believe that test-firing of Mr. Batts'</p> <p>9 rifle, the subject rifle, would be beneficial?</p> <p>10 A It's not beneficial particularly to my</p> <p>11 opinions. I believe the physical evidence speaks for</p> <p>12 what happened to that rifle at the time it injured</p> <p>13 Mr. Batts, but I'm an engineer, and I enjoy testing</p> <p>14 so I'm always willing to test something that may be</p> <p>15 done safely. Mr. -- my client may feel differently</p> <p>16 about altering the evidence, but...</p> <p>17 Q Have you suggested to Mr. Meador at any point</p> <p>18 in time that he should consider testing the subject</p> <p>19 rifle?</p> <p>20 A I have not.</p> <p>21 Q If testing were to show, Mr. Powell, that the</p> <p>22 incident could not have occurred with a properly</p> <p>23 loaded cartridge, would that change your opinion?</p> <p>24 A It would depend on the testing; but yes, if</p> <p>25 we can accurately show that it took a high-pressure</p>

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<p style="text-align: right;">Page 145</p> <p>1 cartridge to do that, which I doubt because it 2 doesn't appear to be a high-pressure firing; but yes, 3 I'm always interested in looking at test results to 4 see.</p> <p>5 Q Would a round with improper dimensions of a 6 cartridge case, for instance, prevent the barrel lug 7 and barrel catch from engaging?</p> <p>8 A I'm sorry. Could you say that again, please?</p> <p>9 Q Sure. Would a round of ammunition within 10 proper dimensions -- I'll back up and rephrase it one 11 more time. Could a round with improper dimensions 12 prevent the barrel lug and barrel catch from 13 engaging?</p> <p>14 MR. MEADOR: On what rifle? On any rifle?</p> <p>15 On one of our rifles?</p> <p>16 Q (By Mr. Danekas) On the H&R Handi-Rifle, 300 17 Blackout.</p> <p>18 A You can create a cartridge with dimensions 19 that would prevent it from latching, yes.</p> <p>20 Q If we were to assume that the incident 21 cartridge case was improperly sized that prevented 22 the barrel catch from engaging the barrel lug and the 23 gun was improperly loaded causing the bullet to stick 24 in the barrel -- okay? Take those two assumptions -- 25 what would happen?</p>	<p style="text-align: right;">Page 147</p> <p>1 that he says he bought at a gun show?</p> <p>2 MR. MEADOR: Objection. Speculation.</p> <p>3 THE WITNESS: Well, I think so. In fact, I 4 think actually shooting after a squib load is 5 actually mentioned in the Handi-Rifle manual and how 6 to clear your rifle and continue shooting.</p> <p>7 Personally, as an engineer, if I had a squib 8 load, I would probably stop right there and take my 9 rifle back to the shop and confirm all the dimensions 10 and then look at all the ammunition.</p> <p>11 Q (By Mr. Danekas) Are you able to determine 12 from the incident video that the rifle locked up?</p> <p>13 That is, there was some engagement between the barrel 14 catch and the barrel lug?</p> <p>15 A In the video, you only determine that 16 Mr. Batts closes the action on the rifle. It closes 17 easily apparently in the video, but you can't see 18 inside the rifle to know what the engagement is.</p> <p>19 Q Can you create an excessive headspace 20 cartridge that would keep the rifle from locking but 21 still close?</p> <p>22 MR. MEADOR: Objection. Speculation.</p> <p>23 THE WITNESS: I have not tried that, but I 24 don't think so, no.</p> <p>25 Q (By Mr. Danekas) But you've not tried it?</p>
<p style="text-align: right;">Page 146</p> <p>1 A It depends. I mean, that's not the evidence 2 in the case. It depends on how you -- how you 3 develop and create your bullet. You could make it do 4 a lot of different things.</p> <p>5 Q Why is that not the evidence in the case?</p> <p>6 A Because you see on video Sergeant Batts 7 placing the cartridge in the chamber. It goes right 8 in, and he easily closes the action on the rifle. If 9 the -- for example if the headspace was so excessive 10 it wouldn't close and latch, then he wouldn't be able 11 to close it.</p> <p>12 Q Have you tested that?</p> <p>13 A What? Whether you could do that or not?</p> <p>14 Q Yes.</p> <p>15 A I have not put it back together and tried to 16 load ammo into the rifle but --</p> <p>17 Q Have you tested that with your exemplar?</p> <p>18 A No. But I can tell you that I can create 19 excessively -- excessive headspace in a cartridge and 20 keep it from closing or going into battery. I've 21 never done it on a Handi-Rifle, but I can certainly 22 do it on a bolt, on a bolt-action rifle.</p> <p>23 Q After Mr. Batts fired the first round that 24 was the squib load, would a reasonably careful user 25 of that ammunition continue to use that ammunition</p>	<p style="text-align: right;">Page 148</p> <p>1 A No.</p> <p>2 Q What is the headspace of a round? How is 3 that defined?</p> <p>4 A It's the dimension from a data point on the 5 slope of the shoulder, for this type of ammo, to the 6 position of the breech face. There is a dimension. 7 There is a maximum and minimum dimension called 8 headspace.</p> <p>9 Q Did you examine or observe the shoulders on 10 any of the rounds produced?</p> <p>11 A Yes.</p> <p>12 Q Did you observe any -- do you know what the 13 term "lazy shoulders" -- "lazy shoulder" means?</p> <p>14 A It means apparently someone hasn't re -- 15 located the shoulder on the cartridge to within 16 proper headspace.</p> <p>17 Q Did you observe any lazy shoulders on any of 18 these cartridges?</p> <p>19 A One of the cartridges had about 5/thousandths 20 of an inch greater headspace than SAAMI max.</p> <p>21 Q I think I asked you about that earlier. You 22 did not try to insert that round into your exemplar; 23 right?</p> <p>24 A Did not, no.</p> <p>25 Q The cartridges that were numbered 3 through</p>

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<p style="text-align: right;">Page 149</p> <p>1 6, three of which was torn down by Mr. Watkins in 2 your presence, they were all resized 5.56 rounds? 3 A Yes. 4 Q And resizing 5.56 rounds or 300 Blackout can 5 are result in thick necks? 6 A Can, yes. 7 Q And thick necks can affect headspace? 8 A No, not generally. 9 Q It can affect the ability of the round to 10 seat in the chamber properly? 11 A If it won't go into the neck of the chamber, 12 yes. 13 Q Do you agree, Mr. Powell, that a user of 14 firearms should read the manufacturer's warnings and 15 instructions that come with the firearm? 16 A Yes. 17 Q It's a good rule to follow; correct? 18 A Yes. 19 Q Did you read Mr. Batts' testimony that he did 20 read the owner's manual that came with the rifle? 21 A I don't exactly remember what he said, but I 22 believe he said he read parts of it or read through 23 it, yes. 24 Q And you have reviewed the owner's manual for 25 this rifle, have you not?</p>	<p style="text-align: right;">Page 151</p> <p>1 statement? 2 A Yes. 3 Q Let's go to page 4. And it's typical in 4 manuals from Remington, they have the various 5 commandments of gun safety; correct? 6 A Yes. 7 Q And the fifth commandment has to do with 8 using proper ammunition; correct? 9 A Correct. 10 Q It's on page 4 of the owner's manual. 11 A Correct. 12 Q The second sentence in that -- on that page 13 says, "Using the wrong ammunition, mixing ammunition 14 or using improperly reloaded ammunition can cause 15 serious personal injury or death." Did I read that 16 correctly? 17 A Yes. 18 Q Do you agree with that statement? 19 A I do. 20 Q And then about a third of the way down the 21 page, there is a -- in handwriting -- not 22 handwriting. In red bold it says, "Reloading 23 Requires Extra Diligence." Do you see where we are? 24 A Yes. 25 Q And the last sentence of that paragraph says,</p>
<p style="text-align: right;">Page 150</p> <p>1 A I have. 2 Q You were provided with the, quote/unquote, 3 original? 4 A A digital copy of it, yes. 5 Q Do you have that handy? 6 A Yes. 7 Q I'll show you what I've marked as <u>Exhibit 23</u>, 8 Mr. Powell. Here you go, Bob. I'll represent to 9 you, Mr. Powell, as you can see from that exhibit, it 10 was marked as Exhibit 1 to Mr. Batts' deposition that 11 he identified as the owner's manual for the rifle. 12 And you have reviewed that in connection with this 13 case? 14 A I have. 15 Q And in the -- on the first page of this 16 manual, in the box that says, "Important," the second 17 sentence -- the second and third sentences read, "To 18 assure safe operation, any user of this firearm must 19 read and understand this manual before using the 20 firearm. Failure to follow the instructions and heed 21 the warnings in this manual can cause property 22 damage, personal injury, and/or death." Did I read 23 that correctly? 24 A You did. 25 Q Do you agree with that as being a sound</p>	<p style="text-align: right;">Page 152</p> <p>1 "Never use ammunition, which has been reloaded by 2 someone else." Did I read that correctly? 3 A Yes. 4 Q Do you agree with that statement? 5 A I do. 6 Q And then a couple of paragraphs later, there 7 is a sentence that says, "Handloaded or reloaded 8 ammunition" -- 9 A I'm sorry. I'm not with you. 10 Q Fair enough. 11 A Okay. I've got it right where the paragraph 12 starts with "Firearms are designed"? 13 Q Yes. 14 A I'm with you. 15 Q The next sentence says, "Handloaded or 16 reloaded ammunition that deviates, either 17 intentionally or accidentally, from load or component 18 recommendations can be very dangerous." Did I read 19 that correctly? 20 MR. MEADOR: Okay. I am going to object. He 21 is here today to talk about his expert opinions 22 related to the mechanics of the rifle, the mechanical 23 defect, the manufacturing defect. He is not here 24 today to render testimony about the propriety of 25 Remington's safety manual or whether he agrees with</p>

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<p>1 it.</p> <p>2 Q (By Mr. Danekas) Okay. Do you agree with</p> <p>3 that statement?</p> <p>4 A Yes.</p> <p>5 MR. MEADOR: Can I have a running objection</p> <p>6 on all these so I don't have to continue --</p> <p>7 MR. DANEKAS: Sure.</p> <p>8 MR. MEADOR: -- interrupting your flow?</p> <p>9 Q (By Mr. Danekas) And then the paragraph that</p> <p>10 begins after the shaded area there, Mr. Powell, says,</p> <p>11 "Not following these guidelines could result in</p> <p>12 serious [sic] injury to yourself or severe damage to</p> <p>13 your firearm." Did I read that correctly?</p> <p>14 MR. MEADOR: Same objection.</p> <p>15 Q (By Mr. Danekas) Did I read that correctly?</p> <p>16 A Yes.</p> <p>17 Q You agree with that, as well; correct?</p> <p>18 A I do.</p> <p>19 Q Do you -- do you agree, Mr. Powell, that this</p> <p>20 owner's manual provides adequate warnings concerning</p> <p>21 the use of reloads?</p> <p>22 A Yes.</p> <p>23 MR. MEADOR: Objection. Form.</p> <p>24 Q (By Mr. Danekas) Do you agree that Mr. Batts</p> <p>25 did not follow the warnings in the owner's manual?</p>	<p>Page 153</p> <p>1 we on the record still?</p> <p>2 Q Yes.</p> <p>3 VIDEOGRAPHER: Yes.</p> <p>4 THE WITNESS: I don't have a printed copy.</p> <p>5 My computer is doing something, trying to boot back</p> <p>6 up, so I don't have a copy with me.</p> <p>7 Q (By Mr. Danekas) Well --</p> <p>8 A Here we go.</p> <p>9 Q Okay.</p> <p>10 A It's still going to take awhile. If you want</p> <p>11 to go on, we can come back to that.</p> <p>12 Q It's going to be probably according to --</p> <p>13 A It's around page 30.</p> <p>14 Q Yes, because I'm looking at your notes as</p> <p>15 well.</p> <p>16 A Correct. But my notes say on page 30 he</p> <p>17 purchased ammo for rifle at gun show in Fort Worth.</p> <p>18 Page 32, purchased 20 rounds of 300 Blackout. Page</p> <p>19 36, this is the only 300 Blackout ammo he had ever</p> <p>20 purchased.</p> <p>21 I thought there was some testimony in there</p> <p>22 that said he had purchased ammo from this dealer</p> <p>23 before.</p> <p>24 Q That's your recollection?</p> <p>25 A That's my general recollection.</p>
<p>Page 154</p> <p>1 A I don't think he handloaded any ammunition.</p> <p>2 He purchased it from a professional organization that</p> <p>3 reloads ammunition as far as he -- as far as he knew.</p> <p>4 Q What did he know about the organization from</p> <p>5 which he bought the reloads?</p> <p>6 A As I recall --</p> <p>7 MR. MEADOR: Objection. Speculation.</p> <p>8 THE WITNESS: To some --</p> <p>9 Q (By Mr. Danekas) What did he testify about</p> <p>10 the organization from which he bought the reloads?</p> <p>11 A He testified that he knew the organization</p> <p>12 had purchased reloaded ammunition or remanufactured</p> <p>13 ammunition, since this is a company, before, and was</p> <p>14 satisfied with their stuff, their work.</p> <p>15 Q Where did he testify in his deposition that</p> <p>16 he had purchased ammunition from this company prior?</p> <p>17 A I'm sorry. I thought that was his testimony.</p> <p>18 Q Well, if it is, tell me where it is.</p> <p>19 A I apologize. I've done something to my</p> <p>20 computer. Do you have his deposition printed?</p> <p>21 Q I do not.</p> <p>22 A Let me see if I can restart this. I</p> <p>23 apologize. I'm restarting my computer so I should be</p> <p>24 back up here in a second.</p> <p>25 I apologize. I don't have it printed. Are</p>	<p>Page 156</p> <p>1 Q And if he had purchased ammunition from this</p> <p>2 company before, it was appropriate for him to go</p> <p>3 ahead and use that ammunition?</p> <p>4 A He felt that they were a good supplier.</p> <p>5 That's why he continued to purchase ammunition from</p> <p>6 them.</p> <p>7 Q Well, find -- open the deposition.</p> <p>8 A I am.</p> <p>9 Q Let's --</p> <p>10 A I want to.</p> <p>11 Q I want to find where he said that he</p> <p>12 purchased it before and --</p> <p>13 A Yeah, I may be mistaken. That's just my</p> <p>14 general recollection.</p> <p>15 Still working. So if you would like to go</p> <p>16 on, we can go on and come back.</p> <p>17 Q Let's wait a second and see if it pops up.</p> <p>18 A I'm guessing it's about five minutes away.</p> <p>19 It's still working, loading programs.</p> <p>20 Here we go. Okay. I have the deposition</p> <p>21 open.</p> <p>22 Q Okay. Find his testimony around page 30</p> <p>23 where he's asked about --</p> <p>24 A It's doing the same thing on this particular</p> <p>25 file. It doesn't want to access this file.</p>

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<p style="text-align: right;">Page 161</p> <p>1 opened and allowed the cartridge to be ejected, only 2 through evaluation can you determine if there was a 3 defect in the rifle.</p> <p>4 Q Okay. So the mere fact that the incident 5 occurred does not in and of itself, standing alone, 6 allow you to reach the conclusion that the rifle was 7 defective?</p> <p>8 A No. You have to determine was the rifle 9 damaged, were the parts the correct parts, was the 10 ammunition correct, all those kind of factors that we 11 looked at in this case.</p> <p>12 Q The -- in your opinion, the defect in this 13 rifle was a manufacturing defect?</p> <p>14 A Correct.</p> <p>15 Q In your opinion, were there any design 16 defects in this rifle?</p> <p>17 A Certainly I'm -- I don't believe that the 18 manufacturer can be happy that they have a history of 19 this rifle firing and the action opening.</p> <p>20 I haven't evaluated that design feature to 21 determine how that breech can be kept closed at all 22 costs, to the fact that it doesn't injure the hunter 23 when an error occurs in either the manufacture or the 24 use of ammunition, to keep him safe.</p> <p>25 So there may be a manufacturing defect, but I</p>	<p style="text-align: right;">Page 163</p> <p>1 occurring. I didn't see any dimensional 2 irregularities in the catch or the lug or any of the 3 other components that interact with them.</p> <p>4 Q What is sufficient engagement to prevent the 5 action from opening from the force of a factory round 6 of ammunition?</p> <p>7 A The engagements specified by Remington.</p> <p>8 Q So anything less than Remington's spec would 9 allow the action to open when a factory-compliant 10 round is fired?</p> <p>11 A Has the potential to do that, that's correct.</p> <p>12 Q And how do you -- how did you determine that?</p> <p>13 A Because Remington has determined that that's 14 the safe engagement length for this rifle.</p> <p>15 Q Well, it's your opinion, then, that anything 16 below spec is not safe.</p> <p>17 A Correct.</p> <p>18 Q Because it has the potential to open.</p> <p>19 A That's correct.</p> <p>20 Q But how did you determine that other than 21 reviewing Remington's spec?</p> <p>22 A Because rifle components are manufactured to 23 be installed and to operate in a certain fashion, 24 determined by the manufacturer. In this case 25 Remington.</p>
<p style="text-align: right;">Page 162</p> <p>1 haven't evaluated for that.</p> <p>2 Q So as you're sitting here today, and I've 3 looked at your initial report and your supplementary 4 report, you are not offering an opinion in regarding 5 a design defect?</p> <p>6 A Correct.</p> <p>7 Q You are offering an opinion that there was a 8 manufacturing defect?</p> <p>9 A Yes.</p> <p>10 Q And the manufacturing defect was the length 11 of engagement between the -- length of engagement 12 between the barrel catch and the barrel lug?</p> <p>13 A Correct.</p> <p>14 Q Did you arrive at any conclusion as to what 15 was causing the insufficient length of engagement 16 between the barrel catch and the barrel lug?</p> <p>17 A Just poor barrel fit. The barrels are 18 individually fit to the receivers, and this one 19 wasn't fitted such that it could be lowered and the 20 engagement closed to the correct engagement length.</p> <p>21 Q Okay. In your opinion, is that the only 22 reason for the insufficient length of engagement 23 between the barrel catch and the barrel lug?</p> <p>24 A Based on my evaluation of the components, I 25 believe that that's the primary reason for that</p>	<p style="text-align: right;">Page 164</p> <p>1 Q Is it not possible, Mr. Powell, that a rifle 2 with length and engagement below spec would still 3 stay engaged when a factory round is fired?</p> <p>4 A Possibly. But again, it's going to depend on 5 how much of that engagement is contact area and how 6 much isn't, if there is debris between them. I mean, 7 there are a large number of factors that are going to 8 determine, once you get past that level of 9 engagement, whether the action is going to open or 10 not.</p> <p>11 MR. DANEKAS: Read back that last answer, 12 please.</p> <p>13 (Reporter reads, "Possibly. But 14 again, it's going to depend on how much of that 15 engagement is contact area and how much isn't, if 16 there is debris between them. I mean, there are a 17 large number of factors that are going to determine, 18 once you get past that level of engagement, whether 19 the action is going to open or not.")</p> <p>20 Q (By Mr. Danekas) You mentioned earlier -- 21 you mentioned a couple of times that there was what 22 you described as damage to the barrel lug. Damage as 23 a result of the incident. Am I understanding you 24 correctly?</p> <p>25 A You are.</p>

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<p>1 Q And was there or was there not any damage to 2 the barrel catch as a result of the incident?</p> <p>3 A Not so -- not as much, no. Just showing low 4 engagement.</p> <p>5 Q Okay. Did you -- did you note in any of your 6 -- either of your reports any what you perceived to 7 be damage to the barrel catch?</p> <p>8 A I don't think I recall in either report that 9 I specified exactly how and where the damage was 10 between the two of them. Just that they were both 11 damaged, primarily the lug on the barrel, and that 12 the particles were present between the two in the 13 engagement area.</p> <p>14 Q Was there any manufacturing defect in your 15 opinion in the ammunition that Mr. Batts was using, 16 particularly the incident round?</p> <p>17 A Not that I've seen, no.</p> <p>18 Q You have both of your reports with you; is 19 that correct?</p> <p>20 A I do.</p> <p>21 Q And they have not changed since they were 22 provided to us, one in January and one earlier this 23 month; is that correct?</p> <p>24 A Correct.</p> <p>25 Q I have marked as <u>Exhibit 2</u> your original</p>	<p>1 Q Okay. And do you refer to the barrel catch 2 at all on this page?</p> <p>3 A I don't think I do.</p> <p>4 Q Okay. My question is: In either of your 5 reports, do you refer or mention anything about any 6 damage to the barrel catch?</p> <p>7 A Not that I recall.</p> <p>8 Q And what you're referring to in page 28 of 9 your report, you are showing a photo that you would 10 take -- a microscopic photo you had taken of the 11 surface of the barrel lug; correct?</p> <p>12 A Correct.</p> <p>13 Q And you are identifying that in your opinion, 14 that there is silver colored metal particles and rub 15 lines representing different engagement positions for 16 the barrel catch over the history of this subject 17 rifle?</p> <p>18 A That's correct.</p> <p>19 Q Okay. Is this photograph that you're showing 20 and the description you're indicating here on page 28 21 of your original report, are you describing damage 22 caused by the incident?</p> <p>23 A Yes, damage caused by the engagement. Some 24 of it is from the incident. Some of it would be from 25 the previous firings. I can't distinguish between</p>

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<p style="text-align: right;">Page 169</p> <p>1 embedded, caused by the engagement of the surfaces in 2 the first place?</p> <p>3 A Well, the particles appear to be present 4 separate from the engagement themselves, that those 5 are related to the manufacturing of the rifle and 6 particles being migrated into this area.</p> <p>7 Those particles don't look like they were 8 created by the scraping of the barrel lug off of the 9 catch surface. They are not smeared on. They are 10 physical discrete particles that are just simply 11 mashed into the surface. They are similar to the 12 machining particles that you see on page 32 of that 13 particular report.</p> <p>14 Q Well, if the surfaces were engaged, if the 15 barrel catch and the barrel lug were engaged at 16 approximately 60/thousandths of an inch at the time 17 of the incident, and the force of the shot caused 18 them to disengage -- and it would have been abruptly; 19 correct?</p> <p>20 A Yes.</p> <p>21 Q Wouldn't you expect to see damage to the 22 barrel lug beyond the fact that these metal shavings 23 are on the surface of the barrel lug?</p> <p>24 A Well, you do. You see -- you see ridge lines 25 of mash and scraped material, both right at the very</p>	<p style="text-align: right;">Page 171</p> <p>1 that correct?</p> <p>2 A Yes.</p> <p>3 Q And in particular, your description for this 4 photograph says, "The blue-green arrows point to the 5 rough poorly manufactured surface of the edge of this 6 lug. The red arrows point to embedded metal shavings 7 and rubbed ridges of this defectively manufactured 8 engagement line." I read that correctly?</p> <p>9 A Yes.</p> <p>10 Q Okay. So let's look at the photograph -- 11 this is, I'm presuming, since you included it in your 12 report, this is the best microscopic photograph of 13 the barrel lug that shows these metal shavings and 14 the rough surfaces; is that right?</p> <p>15 A Yes.</p> <p>16 Q So the blue-green arrows point to the rough 17 surface of the edge of the lug; correct?</p> <p>18 A Correct.</p> <p>19 Q And the edge -- what do you consider to be 20 the edge of the lug?</p> <p>21 A That region that's shown in the photograph.</p> <p>22 Q And the red arrows are pointing to metal 23 shavings?</p> <p>24 A Yes. Metal shavings and rubbed ridges.</p> <p>25 Q Okay. And so what we're -- what you're</p>
<p style="text-align: right;">Page 170</p> <p>1 edge and then set just back from that, as you see in 2 Photograph 14. I'm calling them rubbed ridges that 3 represents damage that was created when the rifle was 4 fired.</p> <p>5 Q Okay. Let's turn on the monitor.</p> <p>6 VIDEOGRAPHER: The button is on the bottom 7 right.</p> <p>8 MR. DANEKAS: Did we hit the button on the 9 bottom right?</p> <p>10 THE WITNESS: Is it coming up? I don't see 11 an image.</p> <p>12 VIDEOGRAPHER: I thought I saw it lit.</p> <p>13 THE WITNESS: Does the button light up?</p> <p>14 MR. MEADOR: It's lit now.</p> <p>15 THE WITNESS: Yeah, it's lit now.</p> <p>16 VIDEOGRAPHER: Yeah, you're on.</p> <p>17 MR. WATKINS: There you go.</p> <p>18 Q (By Mr. Danekas) So I'm showing you on the 19 monitor here, Mr. Powell, your Photograph 14 from 20 your original report; is that correct?</p> <p>21 A Yes.</p> <p>22 Q And this is a photograph you chose to insert 23 or to include in your first report because it shows 24 the items that you've described before: The surface 25 of the edge of the lug and some metal shavings; is</p>	<p style="text-align: right;">Page 172</p> <p>1 pointing to here in this photograph with these 2 blue-green arrows and the red arrows is what you've 3 described earlier a few times in the deposition as 4 damage caused by the incident?</p> <p>5 A Well, the blue arrows are underneath the 6 coating, so those areas of damage would have been 7 created before the part was coated. But the areas 8 that are white are those that were created by contact 9 with the locking lug.</p> <p>10 Q Okay. So that was caused by contact with the 11 locking lug; but if I understood you correctly, and 12 tell me if I'm wrong, that contact -- there was prior 13 contact between the locking -- between the barrel 14 catch and the barrel lug prior to the incident round 15 being fired; correct?</p> <p>16 A Yes.</p> <p>17 Q Because we know that Mr. Batts had at least 18 opened and closed the action two times before, for 19 his first two shots; right?</p> <p>20 A Yes. At least. I mean, he may have closed 21 it more than that.</p> <p>22 Q Understood. And we went through his 23 deposition. I think he said he'd opened it a few 24 times. I don't remember the exact number of times, 25 before he used the rifle; okay?</p>

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<p style="text-align: right;">Page 173</p> <p>1 A Okay.</p> <p>2 Q So here is my question. Are you able to 3 identify any damage caused to this piece of metal, 4 the barrel lug, as a result of it being caused -- it 5 being forcibly disengaged from the barrel catch at 6 the time of the incident?</p> <p>7 A You mean distinguish that particular firing 8 as opposed to any other firing?</p> <p>9 Q Yes, sir.</p> <p>10 A No, you can't distinguish between the damage 11 of the different firings. It's all right there 12 together at the edge of the barrel lug.</p> <p>13 Q Okay. So --</p> <p>14 A So --</p> <p>15 Q I'm sorry. I cut you off.</p> <p>16 A Go ahead.</p> <p>17 Q Go ahead.</p> <p>18 A So damage created to this lug area by firing 19 are the white areas that have cut through the coating 20 right there, and they are in small ridges, and I 21 can't distinguish which ridge represented the final 22 firing, but they are all -- they are all -- look bad.</p> <p>23 Q So what we're seeing here, this -- what you 24 determined to be abnormalities in the barrel lug, 25 they are created by the contact, the mating, if you</p>	<p style="text-align: right;">Page 175</p> <p>1 Q How so?</p> <p>2 A The location of engagement is much narrower 3 because of the low engagement on the subject rifle, 4 and the particles and ridged contact that's present 5 on the subject rifle are smooth motion from rubbing 6 as the parts engage on the exemplar rifle. There is 7 no indication that there is only momentary engagement 8 or small engagement on the exemplar rifle.</p> <p>9 Q Would you inspect -- would you expect 10 engagement between two metal surfaces to have 11 different -- maybe I'm not using the term correctly, 12 but friction coefficients if one is smooth on smooth 13 and the other is rougher surface against rougher 14 surface?</p> <p>15 A Surfaces could affect frictional forces 16 between components, yes.</p> <p>17 Q And wouldn't a -- I'm thinking of something 18 like sandpaper. Wouldn't a rougher surface against a 19 rougher surface create more robust engagement than 20 smooth on smooth, all other things being equal?</p> <p>21 A No, not necessarily, and certainly not in 22 this case, if you're saying that you think that that 23 rougher engagement surface makes greater -- greater 24 resistance to opening forces.</p> <p>25 REPORTER: Resistance to what forces?</p>
<p style="text-align: right;">Page 174</p> <p>1 will, between the barrel catch and the barrel lug?</p> <p>2 A Yes.</p> <p>3 Q If I --</p> <p>4 A That's what it's showing.</p> <p>5 Q If I were to ask you, Mr. Powell: 6 Specifically tell me what, if any, damage was caused 7 to the barrel lug by the event of it forcibly being 8 separated from the barrel catch at the time of the 9 incident, you could not identify for me any specific 10 such damage; is that correct?</p> <p>11 A Which -- no. I can identify the damage. I 12 can't tell you that specific speck that was created 13 on the last firing.</p> <p>14 Q Right. That was my question.</p> <p>15 A That's correct.</p> <p>16 Q Okay.</p> <p>17 A It's all -- it's all showing that there was 18 low engagement and that the engagement is damaging 19 that surface and, at the last firing, they became 20 totally disengaged.</p> <p>21 Q Okay. And -- okay. Does the surface of the 22 barrel lug on the subject rifle differ from the 23 barrel lug -- the surface of the barrel lug on your 24 exemplar?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 176</p> <p>1 THE WITNESS: Opening forces between the 2 barrel lug and the barrel latch.</p> <p>3 Q (By Mr. Danekas) Have you tested that?</p> <p>4 A No, I haven't. I have not tested the 5 frictional forces between the two, no.</p> <p>6 Q So you can't say if you were to -- if you 7 were able to set your exemplar rifle to 8 60/thousandths of engagement, everything else being 9 equal with that exemplar rifle, and 60/thousandths 10 engagement with the subject rifle, you don't know as 11 you sit here which would have a more robust 12 engagement, if they were to differ at all?</p> <p>13 A I have not measured the frictional contact 14 between those four -- between those components so I 15 can't tell you. I don't have an opinion one way or 16 the other.</p> <p>17 Q How would normal contact wear between the 18 barrel lug and the barrel catch look any different 19 than what we see in the Batts rifle, the subject 20 rifle?</p> <p>21 A You expect fuller contact, deeper contact 22 between the two, and you would expect smooth surface 23 markings between the two, not these -- these 24 fractured ridges at the edge of the -- of the barrel 25 lug like you see in the Batts rifle.</p>

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<p>1 Q When you say -- I think you used the word 2 "deeper contact." What are you referring to? The 3 length of engagement?</p> <p>4 A Yes.</p> <p>5 Q How do -- my recollection is that you on the 6 CT scan measured the length of the engagement, slash, 7 overlap a -- strike that. My recollection is you 8 have a photograph, and I can show it to you if you 9 want. Well, actually, I will. Let's go to -- let's 10 see.</p> <p>11 A Are you talking about page 27 of my report?</p> <p>12 Q Bear with me. It might be. Let's see. I'm 13 going to show you a printout of it so we have it for 14 the record, but it's <u>Exhibit 21</u>. Is that a printout 15 of what you were referring to on a page of your 16 report or no?</p> <p>17 A It looks like the subject. Is that what 18 we're looking at? That's the subject barrel lug?</p> <p>19 Q It is, sir, yes.</p> <p>20 A Yes.</p> <p>21 Q And that's -- that is the same photo on -- in 22 your report?</p> <p>23 A It's not the same as my Photograph 14. It's 24 the left side of Photograph 13.</p> <p>25 Q Okay. I see in -- I'm going to show you on</p>	<p>1 that referring to?</p> <p>2 A That is the furthest marking that I could 3 find on that part of the engagement surface.</p> <p>4 Q So what is the significance of the -- what 5 you're referring to here as engagement surfaces -- 6 surface?</p> <p>7 A That at some point, the locking latch surface 8 had been that far back on the lug surface and created 9 a mark.</p> <p>10 Q So the range that you have measured here on 11 the subject barrel lug is from 71.6/thousandths to 12 77.3/thousandths?</p> <p>13 A In that area, that's correct.</p> <p>14 Q I have not seen -- and I think we covered 15 this before. I have not seen your doing these types 16 of measurements on your exemplar barrel lug; is that 17 correct?</p> <p>18 A I'm sure I looked at that. Photograph 15 of 19 my report, page 30, is the exemplar barrel lug. And 20 if I don't have specific measurements on there, I'm 21 sure I just simply relied on the engagement that was 22 seen through the view hole on the side, but the 23 engagement surface is much greater and the markings 24 on it are very smooth than what I would expect.</p> <p>25 Q Well, are you saying that you are able to</p>

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<p style="text-align: right;">Page 181</p> <p>1 measure it.</p> <p>2 Q Is the wear pattern on the -- on your 3 exemplar different than the wear pattern on the 4 subject rifle's barrel lug?</p> <p>5 A Yes. The contact pattern is very different.</p> <p>6 Q How so?</p> <p>7 A The contact pattern on the exemplar rifle is 8 smooth and deep, meaning there is a large engagement 9 length on it. The contact patch on the subject rifle 10 is very short and contains metal particles and ridges 11 of material that have been scraped away.</p> <p>12 Q Had you had any experience with Handi-Rifles 13 prior to your involvement in this case?</p> <p>14 A I have had Handi-Rifles evaluated in my 15 office, not for this condition but for looking at 16 forces that allow the hammer to go forward when the 17 trigger is pulled. If the hammer is cocked and there 18 is a transfer bar, in order to uncock it, you have to 19 pull the hammer back with a hammer spur, pull the 20 trigger and slowly allow the hammer to go forward.</p> <p>21 I was asked at some point to evaluate forces 22 that allowed the hammer spur to slip out from 23 underneath the thumb and allow the rifle to fire when 24 the trigger was being pulled. So I had three or four 25 in my office to look at those forces.</p>	<p style="text-align: right;">Page 183</p> <p>1 Q (By Mr. Danekas) Mr. Powell, so your opinion 2 you've mentioned a few times today is that the 3 incident round was properly loaded, that there was 4 compromised engagement between the barrel catch and 5 the barrel lug, and that the oil that Mr. Batts used 6 as shown on the recovered video had no effect on the 7 incident?</p> <p>8 A In general, that's correct.</p> <p>9 Q If -- I think you had indicated earlier that 10 you were -- you did not know of a way of doing a 11 test-firing with a rifle to adjust the engagement 12 down to, say, 60/thousandths. Is that a fair 13 statement?</p> <p>14 A Short of fitting a new barrel, correct.</p> <p>15 Q Uh-huh. If you could do that and you could 16 adjust the engagement down to 60/thousandths, do you 17 see any value of running a test by firing a factory 18 round of ammunition out of the rifle to see if the 19 action would open and propel the cartridge case 20 rearward with sufficient force to cause injury?</p> <p>21 A As we discussed several times in my 22 deposition today, as an engineer, I think all testing 23 is good. If you could do it, I would like to see it.</p> <p>24 Q Okay. If that test were able to be performed 25 and you set an engagement between the barrel catch</p>
<p style="text-align: right;">Page 182</p> <p>1 Q Did you utilize any of those in connection 2 with your work in this case?</p> <p>3 A No. I no longer have those rifles.</p> <p>4 Q Okay. As you sit here today, are you 5 prepared to offer any opinion concerning the defect 6 in this rifle other than the engagement between the 7 barrel catch and the barrel lug?</p> <p>8 A Well, you've asked me a lot of questions in 9 my deposition. That was my primary opinion is I'm 10 here to give the opinions that I wrote into my two 11 reports.</p> <p>12 Q At this point in time, Mr. Powell, do you 13 have any further testing planned?</p> <p>14 A Not at this time, sir.</p> <p>15 Q I think I asked you this earlier, but it's 16 your opinion that the use of Mr. -- the use of oil by 17 Mr. Batts had no effect on the incident?</p> <p>18 A Correct.</p> <p>19 Q Is that correct?</p> <p>20 A That's correct.</p> <p>21 MR. DANEKAS: Let's take a short break.</p> <p>22 VIDEOGRAPHER: Off the record at 3:46.</p> <p>23 (Recess held)</p> <p>24 VIDEOGRAPHER: We're back on the record at</p> <p>25 4:09.</p>	<p style="text-align: right;">Page 184</p> <p>1 and the barrel lug at 60/thousandths and you fired a 2 factory round out of the rifle and the action did not 3 open, what effect would that have on your opinion?</p> <p>4 A I don't know.</p> <p>5 MR. MEADOR: Objection. Form. Calls for 6 speculation. It's an incomplete hypothetical. He's 7 already testified that in addition to the 8 60/thousandths, there were variations in the 9 surfaces, and he's testified about that repeatedly.</p> <p>10 THE WITNESS: I would have to see the test. 11 I mean, you're giving me hypotheticals. I mean, 12 that's -- that's not the evidence in this case.</p> <p>13 Q (By Mr. Danekas) What if you'd ran a test 14 where you had zero engagement between the barrel 15 catch and the barrel lug and you shot a factory round 16 and that test showed that a cartridge case would not 17 be expelled rearward, would that affect your opinion?</p> <p>18 A I don't know.</p> <p>19 MR. MEADOR: Same objection.</p> <p>20 THE WITNESS: I'd have to see how the test is 21 run and --</p> <p>22 MR. MEADOR: Calls for speculation and 23 incomplete hypothetical. Let me make my objections. 24 It's an incomplete hypothetical and it calls for 25 speculation. You can answer if you know.</p>

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<p>1 A No, they have not.</p> <p>2 Q Do you have any formal education in</p> <p>3 ballistics?</p> <p>4 A No.</p> <p>5 Q What is ballistics? What do you understand</p> <p>6 that term to be?</p> <p>7 A The evaluation of objects moving at high</p> <p>8 speeds without additional propulsion.</p> <p>9 Q That would include bullets and projectiles</p> <p>10 fired from firearms?</p> <p>11 A Yes. Ballistic missiles. Any type of an</p> <p>12 object that is given a force and a velocity and it's</p> <p>13 traveled through the atmosphere or space.</p> <p>14 Q Other than a lawyer who is involved in a suit</p> <p>15 against the firearms manufacturer, have you ever been</p> <p>16 asked to evaluate the design of a firearm?</p> <p>17 A I've been asked by an insurance company, yes.</p> <p>18 Q In what context?</p> <p>19 A To evaluate how firearms characteristics</p> <p>20 allowed an out-of-battery explosion.</p> <p>21 Q On one occasion?</p> <p>22 REPORTER: Allowed a what?</p> <p>23 THE WITNESS: Out-of-battery explosion.</p> <p>24 Q (By Mr. Danekas) On one occasion?</p> <p>25 A Yes.</p>	<p>Page 189</p> <p>1 A Yeah, I have that here. Here is 55.</p> <p>2 Q Have you got it?</p> <p>3 A Yeah.</p> <p>4 Q You've reviewed those two documents?</p> <p>5 A I have.</p> <p>6 Q And you understand those to be what's called</p> <p>7 product service files from Remington?</p> <p>8 A Yes.</p> <p>9 Q Are the two incidents described in those</p> <p>10 documents in your view similar to this case?</p> <p>11 A They are similar in that the rifle action</p> <p>12 opened and a shell was ejected.</p> <p>13 Q Would you describe what happened in this</p> <p>14 case, the Batts case, as a shell being ejected or</p> <p>15 expelled, if you distinguish between those two terms?</p> <p>16 A In this case I would not -- if you want to</p> <p>17 say expelled because if I say ejector -- ejected,</p> <p>18 that implies that it's using the ejector of the</p> <p>19 firearm. Expelled is fine, but they are synonymous</p> <p>20 in my mind.</p> <p>21 Q Okay. With respect to those two product</p> <p>22 service files you reviewed, you obviously did not</p> <p>23 examine either of those firearms; correct?</p> <p>24 A Correct.</p> <p>25 Q So you have no knowledge of whether the</p>
<p>Page 190</p> <p>1 Q Other than that one occasion where an</p> <p>2 insurance company asked you to evaluate the design of</p> <p>3 a firearm, has anyone other than a lawyer suing a</p> <p>4 firearms manufacturer asked you to do so?</p> <p>5 A No.</p> <p>6 Q Generally, you do not reconstruct accidents</p> <p>7 involving firearms; is that correct?</p> <p>8 A I have done some reconstruction, but</p> <p>9 generally I have not in the last 10 years or so.</p> <p>10 Q Let me ask you a couple of questions about</p> <p>11 the product service files that you mention in your</p> <p>12 first report, and you call out two of them: One</p> <p>13 beginning with a document that is numbered REM 00055</p> <p>14 and REM 00130. Do you know from -- I'll let you take</p> <p>15 a minute to get that document or documents if you</p> <p>16 want.</p> <p>17 A You said 155?</p> <p>18 Q No. 055.</p> <p>19 A 505.</p> <p>20 Q 00055.</p> <p>21 A I don't see that one in my file right here.</p> <p>22 Maybe it's right here.</p> <p>23 Q I thought that's what you mentioned.</p> <p>24 A Okay. Go ahead. The other one was 00130?</p> <p>25 Q Yes.</p>	<p>Page 192</p> <p>1 barrel catch was engaged with the barrel lug at the</p> <p>2 time those rifles were discharged; is that correct?</p> <p>3 A I only know what's in these particular</p> <p>4 product service documents.</p> <p>5 Q Okay. So do you know whether the barrel lug</p> <p>6 was engaged with the barrel catch in either of those</p> <p>7 instances?</p> <p>8 A Only what the Remington inspector said, that</p> <p>9 it was minimum lock-up on the barrel catch.</p> <p>10 Q Do you know whether either of those instances</p> <p>11 -- incidents involved reloads or remanufactured</p> <p>12 ammunition?</p> <p>13 A No, I don't see any references to what type</p> <p>14 of ammunition they were shooting. One was a 243</p> <p>15 Winchester rifle cartridge and the other a 44</p> <p>16 Remington Magnum, pistol cartridge.</p> <p>17 Q Both of those incidents involved different</p> <p>18 calibers involved in this case; correct?</p> <p>19 A Correct.</p> <p>20 Q And that would involve different pressures</p> <p>21 created in the chamber at the time the rounds were</p> <p>22 fired; correct?</p> <p>23 A Yes. The letter attached to the statement</p> <p>24 00130 -- it's on page 00133 -- says he was firing a</p> <p>25 factory 243 round.</p>

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<p style="text-align: right;">Page 193</p> <p>1 Q Okay. 2 A I'm not sure if they say in the other one. 3 Q And based on your -- 4 A It doesn't say on this one that I see. 5 Q And based on your review of the records, you 6 do not have an opinion as to what caused the action 7 to open in either of those instances; is that 8 correct? 9 A No, that they identified the cause as minimum 10 lock-up on the barrel catch. That's identified as 11 cause. 12 Q All right. And neither of those instances, 13 incidents, involved an injury to the shooter; is that 14 correct? 15 A I don't know what injuries were caused. 16 Correct. It just talks about the shots being 17 ejected, if you will, and hitting them in the face or 18 head. 19 Q At what velocity were they ejected? 20 A Don't know. 21 Q Do you see any reference in either of those 22 cases where the case was ejected with such force to 23 create an injury, pierce skin or injure an eye? 24 A No. Just that they reference them both to 25 being a safety issue.</p>	<p style="text-align: right;">Page 195</p> <p>1 statics, yes. 2 Q How about any specialized training in 3 kinetics or kinematics? Do you know what I'm talking 4 about? 5 A I do. Some of my physics courses would cover 6 kinematics, but I don't have any specialized training 7 beyond my college degree, but those are basic 8 subjects for all engineers. 9 Q Uh-huh. What is kinematics? 10 A Basically the study of materials in motion. 11 Q Materials in motion or the force to create 12 the motion? 13 A Same thing, yes. They are all interrelated. 14 Q The armorers course that you have referenced 15 on your CV, the armorers course by Glock and Barrett, 16 were those one-day courses? 17 A Yes. 18 Q And as I understand it, you can sign up on 19 line and pay a fee and take the course? 20 A Barrett, I had to go through and get approval 21 to attend that course, and the Glock as well. 22 Q What kind of approval? 23 A I had to demonstrate a need for attending the 24 class since it was with law enforcement, armorers. 25 Q You're a registered professional engineer in</p>
<p style="text-align: right;">Page 194</p> <p>1 Q And do either of those instances involve a 2 situation where the bullet was left in the barrel? 3 A I don't know. 4 Q Do those -- either of those instances speak 5 about the surfaces of the barrel lug or the barrel 6 catch? 7 A No. 8 Q Do either of those instances mention the 9 degree of engagement between the barrel lug and the 10 barrel catch? 11 A No. Just at its minimum. 12 Q Your degree from Oklahoma in '74 was in 13 metallurgical engineering? 14 A Correct. 15 Q And you equate that -- I think you used the 16 terms "metallurgical engineering" and "materials 17 engineering" interchangeably? 18 A Yes. 19 Q You do not have a degree in mechanical 20 engineering; correct? 21 A Correct. 22 Q Do you have any advanced training in dynamics 23 of mechanical parts? 24 A Yes. I've taken -- part of my engineering 25 background is in courses in engineering dynamics and</p>	<p style="text-align: right;">Page 196</p> <p>1 Oklahoma? 2 A Yes. 3 Q I noticed on the back of your computer that 4 you had up for the deposition, you have a sticker 5 there that says National Society of Professional 6 Engineers; correct? 7 A I'd forgotten. Yes. 8 Q What do you -- what is involved in becoming a 9 member of the National Society of Professional 10 Engineers? 11 A Being a professional engineer. 12 Q Do you have a professional engineer's stamp? 13 A Seal? Yes. 14 Q Seal. 15 A Yes. 16 Q Yeah, they call it a seal. Do you use that 17 in connection with litigation activities? 18 A Not generally. I'm not required to; but if 19 I'm sealing drawings, for example, or some official 20 documents, then I use my seal. 21 Q Have you ever used the seal in connection 22 with litigation matters? 23 A I don't recall. I may have, yes, long ago. 24 Q Why do you generally not use the engineering 25 seal in connection with litigation matters?</p>

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<p>1 A It's not required.</p> <p>2 Q In the state of Oklahoma, your specialty in</p> <p>3 engineering, if I read the entry correctly, was in</p> <p>4 metallurgical engineering?</p> <p>5 A Correct.</p> <p>6 Q And you are allowed in Oklahoma to designate</p> <p>7 a primary practice, area of practice; correct?</p> <p>8 A Metallurgical engineering, yes.</p> <p>9 Q You're also allowed to designate secondary</p> <p>10 areas of practice?</p> <p>11 A I don't -- no, I don't think so. I think you</p> <p>12 would have to take a separate test to do secondary</p> <p>13 areas.</p> <p>14 Q A separate test to show that you're qualified</p> <p>15 to designate other areas of practice?</p> <p>16 A I believe that's correct.</p> <p>17 Q That would include mechanical engineering?</p> <p>18 A Yes.</p> <p>19 Q And you've not taken any tests?</p> <p>20 A Correct.</p> <p>21 Q You're not registered under the state of</p> <p>22 Oklahoma as having a specialty in mechanical</p> <p>23 engineering; is that correct?</p> <p>24 A That's correct.</p> <p>25 Q I think you mentioned to me earlier that you</p>	<p>1 compensation has come from working on</p> <p>2 firearms-related cases?</p> <p>3 A I -- I don't know. I don't know what</p> <p>4 percentage that is. I've worked on some large</p> <p>5 pipeline cases in that period of time, so 80 percent</p> <p>6 sounds a little high.</p> <p>7 Q Is it more than 50 percent?</p> <p>8 A I would think so, yes.</p> <p>9 Q You've testified against various firearms</p> <p>10 manufacturers; correct?</p> <p>11 A Yes.</p> <p>12 Q You've testified against Winchester?</p> <p>13 A Winchester Olin, correct.</p> <p>14 Q Uh-huh. Thompson/Center Arms?</p> <p>15 A Yes.</p> <p>16 Q Marlin Firearms?</p> <p>17 A Yes.</p> <p>18 Q Freedom Arms?</p> <p>19 A Yes.</p> <p>20 Q Cobra Arms?</p> <p>21 A Yes.</p> <p>22 Q J. P. Sauer?</p> <p>23 A Yes.</p> <p>24 Q Lorcin?</p> <p>25 A Lorcin?</p>
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<p>1 first became -- or first testified, I think this was</p> <p>2 before the deposition started, in the late 70's?</p> <p>3 A Correct.</p> <p>4 Q Since 1990, you have been at Support Services</p> <p>5 Engineering Corporation; is that correct?</p> <p>6 A The late 90's, correct. Pardon me. The</p> <p>7 early 90's. I apologize.</p> <p>8 Q And that is a corporation of which you're the</p> <p>9 sole owner?</p> <p>10 A Correct.</p> <p>11 Q And that has been the case since the early</p> <p>12 90's?</p> <p>13 A Yes.</p> <p>14 Q And since you created Support Services</p> <p>15 Engineering Corporation, have you ever designed or</p> <p>16 manufactured any product?</p> <p>17 A No.</p> <p>18 Q In the past 10 years or so, most of your work</p> <p>19 has been for attorneys?</p> <p>20 A Yes.</p> <p>21 Q Related to lawsuits or potential lawsuits; is</p> <p>22 that correct?</p> <p>23 A Correct.</p> <p>24 Q In the last, say, three years, '16, '17 and</p> <p>25 '18, would you estimate that 80 percent of your</p>	<p>1 Q Lorcin, L-O-R-C-I-N?</p> <p>2 A Yes, I'm not sure -- it was a Lorcin pistol,</p> <p>3 but I'm not exactly sure who the corporation was that</p> <p>4 manufactured it at that time.</p> <p>5 Q R.G. Industries?</p> <p>6 A Yes.</p> <p>7 Q Smith & Wesson?</p> <p>8 A I don't recall testifying against Smith &</p> <p>9 Wesson.</p> <p>10 Q Have you testified in any cases involving</p> <p>11 Glock?</p> <p>12 A I've evaluated Glocks. I've not testified</p> <p>13 against any Glock products.</p> <p>14 Q How about Berettas?</p> <p>15 A I have not testified against any Beretta</p> <p>16 products that I recall.</p> <p>17 Q Browning?</p> <p>18 A Not against any Browning, no. Again, I've</p> <p>19 evaluated those firearms, but I haven't been involved</p> <p>20 in any testimony against them.</p> <p>21 Q All of your testimony in firearms cases has</p> <p>22 been on behalf of the plaintiffs, those suing the</p> <p>23 firearms manufacturers, and not on behalf of the</p> <p>24 manufacturer; is that correct?</p> <p>25 A Yes.</p>

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<p>1 Q You have testified in other Remington 2 lawsuits; is that correct?</p> <p>3 A Yes.</p> <p>4 Q Have you ever concluded in any Remington case 5 that the firearm was not defective in design or 6 manufacture?</p> <p>7 A Yes.</p> <p>8 Q Which ones?</p> <p>9 A Well, I don't recall the specific cases, but 10 there have been a number of times when I've evaluated 11 firearms and told them that I didn't feel that the 12 firearm was the result of the injury that that person 13 received.</p> <p>14 Q Specifically Remington firearms cases?</p> <p>15 A Not just Remington but others as well, but 16 certainly Remingtons.</p> <p>17 Q But you don't remember any of the details?</p> <p>18 A Oh, recently, probably within the last year, 19 a Remington firearm was brought to me that had 20 suffered an out-of-battery explosion, and I felt that 21 the receiver had been altered, the receiver and bolt 22 had been altered, and that the failure was the result 23 of those alterations, for example.</p> <p>24 Q What Remington model was involved?</p> <p>25 A I think it was a 770.</p>	<p>1 based on the evidence as to whether you try to 2 replicate the incident or not?</p> <p>3 A Just the specific factors of that particular 4 investigation.</p> <p>5 Q Like what? What are the factors you take 6 into account?</p> <p>7 A Fractures, damage, weapon behavior, 8 components damage or undamaged. I mean all the 9 different aspects that you evaluate firearms for.</p> <p>10 Q Since the late 70's, you've testified now in 11 approximately 350 depositions?</p> <p>12 A I haven't counted them up. I've typically 13 been deposed five to 10 times a year, so that sounds 14 about right.</p> <p>15 Q And since the late 70's, you have testified 16 at trial about 70 times?</p> <p>17 A One to two times a year over 40 years, so it 18 could be 70 times. I haven't counted them.</p> <p>19 Q In the last 10 years, have you testified on 20 behalf of any defendant in any litigation?</p> <p>21 A Yes.</p> <p>22 Q What?</p> <p>23 A I don't recall offhand, but I've testified 24 for defendants.</p> <p>25 Q Do you recall the last time you testified on</p>
<p style="text-align: center;">Page 202</p> <p>1 Q In any of the -- in any of your firearms 2 cases, have you ever replicated the underlying 3 incident?</p> <p>4 A Sometimes, yes.</p> <p>5 Q When -- what factors do you take into account 6 as to whether to try to replicate an incident and 7 when you don't need to try to replicate an incident?</p> <p>8 A Generally, we're replicating incidences when 9 the firearm is not going to be altered for the 10 testing to replicate that particular failure.</p> <p>11 Q I'm sorry. When the firearm is what?</p> <p>12 A Not going to be damaged. It's not going to 13 be altered during the testing.</p> <p>14 Q So in those instances where you try to 15 replicate the incident, do you always use the subject 16 firearm?</p> <p>17 A Not always, no.</p> <p>18 Q So in those cases you have an option, in many 19 cases, do you not, to use exemplar firearms to try to 20 replicate the incident?</p> <p>21 A If you could do it safely, yes.</p> <p>22 Q And if you can do it safely, do you usually 23 then try to replicate the incident?</p> <p>24 A Sometimes. It depends on the evidence.</p> <p>25 Q What are the factors you take into account</p>	<p style="text-align: center;">Page 204</p> <p>1 behalf of a defendant?</p> <p>2 A No. I'd just have to go look it up.</p> <p>3 Q Currently, a hundred percent of your time is 4 spent on litigation matters?</p> <p>5 A Currently, that's correct.</p> <p>6 Q How long has that been the case?</p> <p>7 A For the last four or five years.</p> <p>8 MR. DANEKAS: Bob, do you have some 9 questions? I think I'll pass the witness for right 10 now. Thanks.</p> <p>11 MR. MEADOR: Let's break till 5 so I can 12 figure out a couple of things.</p> <p>13 VIDEOGRAPHER: Off the record at 4:49.</p> <p>14 (Recess held)</p> <p>15 VIDEOGRAPHER: We're back on the record at 16 4:55.</p> <p>17 CROSS EXAMINATION</p> <p>18 BY MR. MEADOR:</p> <p>19 Q Introduce yourself to the jury, please.</p> <p>20 A My name is Charles Wayne Powell. I live in 21 Norman, Oklahoma. I'm a registered professional 22 engineer/materials engineer.</p> <p>23 Q All right. I've retained you on behalf of 24 Jon Batts in a lawsuit filed against Remington 25 related to an incident that happened back in November</p>

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<p>1 2015; is that right?</p> <p>2 A Yes, sir.</p> <p>3 Q You've been designated as an expert and</p> <p>4 that's why you're testifying here today; is that</p> <p>5 right?</p> <p>6 A Yes.</p> <p>7 Q Okay. All right. Can you identify Exhibit</p> <p>8 Number 1 for us?</p> <p>9 A Plaintiff's Exhibit Number 1 is a copy of my</p> <p>10 curriculum vitae.</p> <p>11 Q Okay. I want to walk you through that real</p> <p>12 briefly. How long have you been an engineer?</p> <p>13 A Well, I graduated from the University of</p> <p>14 Oklahoma in 1973, and I went on active duty in the</p> <p>15 U.S. military from '73 to '76. I came back to one</p> <p>16 year of grad school and then left grad school to be</p> <p>17 an engineer with a company that ultimately became</p> <p>18 Engineering Materials Technology, which I became</p> <p>19 president of after a number of years.</p> <p>20 I became registered after that period of</p> <p>21 time, probably -- oh, my registration probably goes</p> <p>22 back to around 1980, and I've been a registered</p> <p>23 materials engineer performing failure analysis for</p> <p>24 the last 40 years.</p> <p>25 Q Well, what's involved? You said that you are</p>	<p>Page 205</p> <p>1 that were the support unit for Fort Benning for the</p> <p>2 ranger school.</p> <p>3 Q All right. In terms of your professional</p> <p>4 history, how long have you been evaluating incidents</p> <p>5 involving firearms?</p> <p>6 A As we had talked a little bit earlier -- I</p> <p>7 can't recall if we did this through defense counsel,</p> <p>8 but I worked on my first firearms cases in the</p> <p>9 mid-1980's. So I've been working on failure analysis</p> <p>10 of firearms for approximately the last 30 years.</p> <p>11 Q Okay. Explain to the jury what failure</p> <p>12 analysis means, please.</p> <p>13 A Failure analysis is -- in my case as a</p> <p>14 materials engineer, it's the evaluation of the</p> <p>15 physical forces and material properties that allow</p> <p>16 materials to misbehave or fail, whether that failure</p> <p>17 is the result of damage from other components or</p> <p>18 corrosion or cracking.</p> <p>19 There are a variety of different types of</p> <p>20 metal failures that I look at in different types of</p> <p>21 components. I'm what's called a physical</p> <p>22 metallurgist. I'm not the kind of metallurgical</p> <p>23 engineer that extracts metals from ore, but I'm the</p> <p>24 kind that evaluates forces of material properties.</p> <p>25 Q And how -- are you exclusively working on</p>
<p>Page 206</p> <p>1 registered. What's involved with the registration</p> <p>2 process?</p> <p>3 A A registered engineer is required to have a</p> <p>4 sufficient amount of experience, and then you're</p> <p>5 allowed to take two different types of tests: One on</p> <p>6 basic engineering subjects, and then later on one in</p> <p>7 professional practices and principles. Both are</p> <p>8 one-day tests.</p> <p>9 Q Is that done through the state?</p> <p>10 A Yes.</p> <p>11 Q And what states have you held that</p> <p>12 certification in?</p> <p>13 A I'm certified currently in Oklahoma and</p> <p>14 Alabama.</p> <p>15 Q All right.</p> <p>16 A With --</p> <p>17 Q You mentioned military.</p> <p>18 A Yeah, I can be registered in other states if</p> <p>19 I need to be.</p> <p>20 Q All right. You mentioned military services.</p> <p>21 What did you do in the military?</p> <p>22 A I was with the Corps of Engineers. We were</p> <p>23 with a combat engineer battalion, so I built things</p> <p>24 and destroyed things with different types of</p> <p>25 explosives. We were one of the engineering units</p>	<p>Page 206</p> <p>1 firearms cases at this point?</p> <p>2 A No. Obviously I do materials failure</p> <p>3 analysis. I work on a wide variety of different</p> <p>4 components, looking at how the materials perform.</p> <p>5 Q All right. Have you and I ever worked on a</p> <p>6 case before?</p> <p>7 A No, sir.</p> <p>8 Q Have you ever testified for me in another</p> <p>9 matter?</p> <p>10 A No.</p> <p>11 Q You are being compensated to be here today,</p> <p>12 aren't you?</p> <p>13 A Yes.</p> <p>14 Q And you've been compensated for the other</p> <p>15 work that you've done on the case; is that right?</p> <p>16 A Yes, sir.</p> <p>17 Q All right. You don't work for lawyers for</p> <p>18 free, do you?</p> <p>19 A Not generally, no, sir.</p> <p>20 Q All right. Will you agree with me today that</p> <p>21 any opinions that you offer will be based on your</p> <p>22 education, training and experience as an engineer?</p> <p>23 A Yes, as well as my physical evaluation and</p> <p>24 testing in this case.</p> <p>25 Q All right. Do you belong to any professional</p>

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<p style="text-align: right;">Page 209</p> <p>1 groups or associations at this point? 2 A Yes. 3 Q Which ones? 4 A Well, I'm a member of the National Society of 5 Professional Engineers. I'm a member of the American 6 Society for Testing Materials. Let's see. Let's go 7 down my list here. Those are the two that I 8 primarily work in. 9 I'm a member of the National Rifle 10 Association, the Glock Shooting Sports Federation, 11 the American Society of Corrosion Engineers, the 12 Historical Metallurgical Society, the Society of 13 Automotive Engineers and the Fifty Caliber Shooters 14 Association. 15 Q All right. We've heard references today 16 about nondestructive testing. Will you explain to 17 the jury what nondestructive testing consists of? 18 A Nondestructive testing is the use of 19 different techniques for the evaluation of materials 20 without damaging them. Primary methods include 21 visual testing, magnetic particle testing, penetrant 22 testing, radiography, ultrasonic testing, 23 eddy-current testing. 24 Q All right. What type of rifle are we here to 25 talk about today?</p>	<p style="text-align: right;">Page 211</p> <p>1 A Yes. 2 Q And I understand that you purchased a like 3 rifle for evaluation purposes; is that right? 4 A Yes. 5 Q You've referred to that in your report as an 6 exemplar rifle; is that true? 7 A Correct. 8 Q All right. The defendant in this case is 9 Remington. The rifle that we're here to talk about 10 is marked as H&R for Harrington & Richardson; is that 11 right? 12 A Yes. 13 Q For the purposes of this case, your opinions 14 regarding Remington or H&R, those are 15 interchangeable; is that right? 16 A Yes. I think Remington is the primary owner 17 of that particular manufacturing brand. 18 Q All right. Now, you've generated two 19 reports; is that right? 20 A Yes. 21 Q And those were marked earlier as Defendant's 22 Exhibits 2 and 4; is that true? 23 A Yes. 24 Q Are Exhibits 2 and 4 true and correct copies 25 of the reports that you generated?</p>
<p style="text-align: right;">Page 210</p> <p>1 A We are here to talk about what's called a 2 Handi-Rifle. It's a single-shot, break-open type 3 rifle. 4 Q Can you explain to the jury what a break-open 5 type rifle as opposed to a pump action, lever action, 6 bolt action? How does that type of action function? 7 A This single-shot action has a single barrel 8 and holds a single cartridge; and when a lever is 9 pushed on the top of the action, the rifle hinges 10 over around an axis and opens up so that a fired 11 cartridge case can be extracted and a new loaded 12 cartridge inserted, and then the rifle is closed by 13 rotating the barrel around its axis and closing it 14 with the receiver. 15 Q And we're here today to talk about the 16 locking mechanism on a rifle; is that right? 17 A Yes. Once you've closed it up, those two 18 pieces have to be held locked together while the 19 cartridge fires. 20 Q All right. The -- we're going to talk about 21 a couple of rifles this afternoon. The rifle that 22 belonged to my client, Jon Batts, has been referred 23 to as the subject rifle. So when I talk about the 24 subject rifle, do you understand that we're talking 25 about Sergeant Batts' rifle?</p>	<p style="text-align: right;">Page 212</p> <p>1 A They are. 2 Q And do those reports reflect your opinions 3 formed with respect to Mr. Batts' case against 4 Remington? 5 A They do. 6 Q You've talked at length earlier today about 7 aspects of those so I want to just kind of hit some 8 of the high points. Based on your investigation into 9 this incident, explain to the jury what you 10 understand to have happened in November of 2015 when 11 Sergeant Batts was injured. 12 A When Sergeant Batts was injured, his rifle 13 did not stay locked together, such that when the 14 barrel and the receiver separated or rotated around 15 the hinge and opened up, the barrel still had 16 pressure in it, and the pressure threw the fired 17 cartridge case back into his head and caused his 18 severe head injury. 19 Q Was the expulsion or ejection of the 20 cartridge from the back of Sergeant Batts' rifle, 21 that was not the means that it's supposed to exit the 22 weapon; is that true? 23 A No. The weapon is designed such that you 24 undo the latch after the cartridge has been fired and 25 you open the action when there is no pressure inside</p>

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<p style="text-align: right;">Page 213</p> <p>1 the barrel and you physically take the cartridge out 2 of the chamber. 3 Q Okay. 4 A The cartridge case out of the chamber. 5 Q Because the folks on the jury may be familiar 6 with rifles, like an AR-15 or others, that the 7 function of the rifle involves a shot ejecting its 8 own shell. This is not one of those types of rifles; 9 true? 10 A No. Those firearms have a mechanism that 11 utilize generally the pressure of the cartridge 12 firing to activate a mechanism to automatically 13 extract the cartridge case and load a new cartridge 14 into the chamber. 15 Q All right. So the rifle that Sergeant Batts 16 was firing on the day of our incident, that 17 Handi-Rifle, that was designed not to expel a 18 cartridge until it was manually opened by the 19 shooter? 20 A Correct. And it doesn't expel one even then. 21 It just simply extracts it slowly out by about an 22 eighth of an inch and you have to grab it -- go in 23 with your fingers and grab it and pull it out. 24 Q Okay. Can you explain briefly for the jury 25 the nature of the locking mechanism on that</p>	<p style="text-align: right;">Page 215</p> <p>1 Number 10, is that a Remington document? 2 A Yes. 3 Q And does that document show proper and 4 improper engagement of those locking parts that you 5 told us about earlier? 6 A Yes, it does. 7 Q All right. What are the three categories 8 that Remington uses to describe those -- is that 9 called an engagement surface? 10 A Yes. It's showing the amount of engagement 11 that the locking latch covers into the barrel lug. 12 Q Okay. 13 A So here we have the latch moving 14 significantly onto the barrel lug, and that's good. 15 It's got good engagement. 16 Q That's the middle -- that's the middle 17 diagram? 18 A Yes. 19 Q Is that right? 20 A The one on the left is "go," meaning it's 21 just right at the minimum but it's still acceptable. 22 And if this indicator notch doesn't engage onto the 23 barrel lug far enough -- in fact, this one is not 24 engaged at all. That's a no-go. That's a failure 25 for the barrel latching mechanism.</p>
<p style="text-align: right;">Page 214</p> <p>1 Handi-Rifle as it existed in the rifle that Mr. Batts 2 was firing? 3 A Sure. In general, there is a lug on the 4 bottom of the barrel; and as the action closes, as 5 the barrel closes into the receiver, that lug down 6 here on the bottom of the barrel rotates underneath a 7 locking latch that swings forward under spring 8 pressure and goes -- and captures the barrel lug on 9 the top of the lug. 10 REPORTER: Top of the lug? 11 THE WITNESS: Lug, L-U-G. Correct. 12 Q (By Mr. Meador) All right. Have you 13 reviewed Remington documents in this lawsuit that 14 relate to the specifications for the locking 15 mechanism on a Handi-Rifle? 16 A I have. 17 Q Is there a diagram included in one of your 18 reports of that locking mechanism? 19 A Yes. 20 Q Can you turn to that, please? 21 A This is Drawing Number 10 in my report that 22 was written in January of 2019. 23 Q Okay. Can you turn that around and the 24 videographer is going to zoom in on that so that we 25 can see that. Now, page 25 of your report, Drawing</p>	<p style="text-align: right;">Page 216</p> <p>1 Q And based on your review of the Remington 2 documents, if a Handi-Rifle is inspected and 3 determined to have a no-go engagement, what do the 4 Remington documents indicate? 5 A It has to be remanufactured so that it is 6 correctly engaging. 7 Q All right. Based on the Remington documents 8 that you reviewed, did Remington release no-go rifles 9 into the stream of commerce? 10 A They are not supposed to, no. 11 Q Okay. 12 A But there are apparently -- from some of the 13 product documents, some have been released. 14 Q Okay. In the -- in your -- and you can put 15 that down. Thank you, Mr. Powell. I appreciate it. 16 In your examination of the exemplar rifle 17 that we talked about earlier, did you examine the 18 engagement surface between the barrel lug and the 19 locking catch? 20 A Yes. 21 Q Did you -- now, is there some means to 22 visualize that with the rifle as they are sold? 23 A There is a means, but it's -- the view window 24 that shows the engagement is hidden underneath a 25 steel plug. So you have to be able to remove the</p>

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<p>1 plug in order to see that engagement. Otherwise, 2 it's totally invisible to the consumer.</p> <p>3 Q Okay. In the course of your examination and 4 evaluation of that exemplar rifle, did you remove 5 that plug?</p> <p>6 A I did and actually used a machine to enlarge 7 the size of the window so we could see clearly the 8 amount of engagement.</p> <p>9 Q So with the enlarged window that you just 10 described, you can actually visually observe the 11 contact between those two surfaces; is that right?</p> <p>12 A Correct.</p> <p>13 Q Now, did you do any sort of removal of that 14 plug or enlargement of the hole on the subject rifle?</p> <p>15 A No, sir.</p> <p>16 Q Were you able to evaluate by any means what 17 the engagement surface looked like on Sergeant Batts' 18 rifle?</p> <p>19 A In two methods, yes. Initially it was 20 CAT-scanned. In other words, it was placed into a 21 machine just like you would CAT-scan a person for a 22 medical issue, and a large radiographic source takes 23 computer views through the part as it rotates on the 24 turntable, and then a three-dimensional image can be 25 reconstructed. And so that particular subject rifle</p>	<p>1 shows those engagement surfaces on the exemplar rifle 2 and the subject rifle?</p> <p>3 A Yes.</p> <p>4 Q Starting with the exemplar rifle, can you 5 hold that up for the videographer to look at.</p> <p>6 A We have the -- first we'll show the 7 radiograph of the exemplar rifle showing its 8 engagement in the radiograph.</p> <p>9 Q All right. Based on your examination of that 10 radiograph result, did the exemplar rifle have the 11 proper or appropriate engagement between the barrel 12 lug and the locking catch?</p> <p>13 A Yes, it did.</p> <p>14 Q All right. Do you have another 15 representation of the exemplar rifle there in Exhibit 16 Number 2?</p> <p>17 A Here is a view through the viewing window, 18 where again you can see that large engagement between 19 the latch and the barrel lug.</p> <p>20 Q Now, if you'll point with your finger or that 21 pen and point out to the jury which part is the 22 barrel lug and which part is the latch.</p> <p>23 A The barrel lug is the lower portion here, and 24 the latch is this large component here.</p> <p>25 Q Okay.</p>
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<p style="text-align: right;">Page 221</p> <p>1 A This is an image taken from the CAT scan from 2 Sergeant Batts' rifle, and you can see that the 3 indicating notch here is beyond the corner of the 4 barrel lug and therefore that's in a no-go situation. 5 Q All right. So on Sergeant Batts' rifle, the 6 engagement surface between the latch and the barrel 7 lug is below the Remington specifications? Is that 8 your understanding? 9 A Yes. 10 Q All right. Thank you. You can put that 11 down. 12 And do you have an opinion as to whether the 13 lack of appropriate engagement with that locking 14 mechanism was the cause of the incident involving 15 Mr. Batts in November of 2015? 16 A Yes. After my testing of the components of 17 both rifles and my education and background and 18 evaluation in failure analysis, I determined that the 19 engagement, which was defectively low on Sergeant 20 Batts' rifle, is what allowed it to open when the 21 cartridge was fired and to eject the shell that 22 caused his injury. 23 Q All right. Have you examined or evaluated 24 ammunition that was provided by Sergeant Batts? 25 A Yes. I was present when one round of the</p>	<p style="text-align: right;">Page 223</p> <p>1 than hypersonic ammunition obviously; true? 2 A Yes. Hypersonic obviously beyond the speed 3 of sound. Subsonic hopefully below the speed of 4 sound. 5 Q All right. Now, earlier you referred to the 6 bullet in subsonic ammunition being larger. By that, 7 did you mean they are heavier? 8 A Yes. They are the same diameter, but they 9 are different -- they are generally longer and 10 heavier than a hypersonic 300 Blackout cartridge 11 bullet. 12 Q Now, do you have an understanding of whether 13 Sergeant Batts was firing subsonic or hypersonic 14 ammunition at the time our incident happened? 15 A When his -- when his injury occurred, the 16 bullet was actually left in the barrel of the rifle, 17 so we could evaluate that bullet and see that it was 18 a polymer-tipped, heavy bullet that was used in 19 subsonic ammunition. 20 Q Have you seen any indication or any evidence 21 to suggest that the ammunition that Sergeant Batts 22 was firing on the day of our incident was in fact 23 hypersonic -- 24 A No. 25 Q -- ammunition?</p>
<p style="text-align: right;">Page 222</p> <p>1 seven rounds that he provided of the low-velocity 300 2 AAC Blackout ammunition, I was there when it was 3 disassembled so we could look and measure the 4 components in that round, as well as seeing all of 5 the rounds when they were digitally radiographed in 6 the CAT-scan unit. 7 Q All right. Now, for the jury's edification, 8 there are many kinds of rifle ammunition; but in our 9 case, we've talked about subsonic ammunition and 10 hypersonic ammunition; is that right? 11 A Yes. 12 Q What -- explain to the jury what subsonic 13 ammunition is, please. 14 A Subsonic ammunition generally uses a larger 15 bullet and the velocities are generally around a 16 thousand feet per second or less so that the round 17 does not break the sound barrier when it leaves the 18 firearm. 19 Q And what's the purpose behind having subsonic 20 ammunition? 21 A Generally, it was manufactured to -- if 22 desired, used with a suppressor so that the firing of 23 that rifle has a very low noise footprint. 24 Q Are the velocities involved in -- those are 25 -- the velocities with subsonic ammunition are slower</p>	<p style="text-align: right;">Page 224</p> <p>1 A No. 2 Q All right. Now, when a -- the mechanics of a 3 bullet firing, a firing pin strikes a primer; is that 4 right? 5 A Yes. 6 Q The primer ignites the powder charge in the 7 cartridge case; true? 8 A Correct. 9 Q And the expanding gas and pressure pushes the 10 bullet out the end of the barrel. Is that generally 11 the way that it works? 12 A Pushes it out the end of the cartridge 13 through the barrel and on out into the environment. 14 Q All right. For various firearms, we've heard 15 references to pressure and chamber pressure. Do you 16 remember that earlier in your deposition? 17 A Yes. 18 Q Explain to the jury what chamber pressure is 19 and how it's generated. 20 A Well, the chamber is that portion of the 21 barrel that's shaped like the cartridge. That's 22 where the cartridge is placed before firing. Chamber 23 pressure is the pressure generated just within that 24 region of the barrel. 25 In general, pressure could be measured</p>

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<p>1 wherever you want to measure pressure at; but in 2 general, chamber pressure is a limiting factor in the 3 design and loading of ammunition.</p> <p>4 Q All right. How is that measured? Is there a 5 -- what's the unit of measurement that we would hear?</p> <p>6 A Pounds -- pounds per square inch generally.</p> <p>7 Q All right. In the case of subsonic 8 ammunition, does it tend to generate chamber pressure 9 that is higher or lower than hypersonic ammunition?</p> <p>10 A It's going to depend on the ammunition, but 11 generally it's lower.</p> <p>12 Q All right. Do subsonic rounds have more or 13 less powder in them than a hypersonic round?</p> <p>14 A The smaller the bullet, generally the more 15 the propellant. So generally, subsonic ammunition 16 that has larger bullets has less propellant in it.</p> <p>17 Q All right. Now, you testified earlier that 18 you've had an opportunity to inspect and image and do 19 various evaluations on the ammunition that was 20 provided by Sergeant Batts as being of the same type 21 and kind as was being fired on the day of our 22 incident; true?</p> <p>23 A Correct.</p> <p>24 Q Have you seen any indication that the 25 ammunition that Sergeant Batts was firing on the date</p>	<p>1 that day, was it the same as the bullet from the 2 disassembled cartridge?</p> <p>3 A Yes.</p> <p>4 Q Did you -- now, have you had an opportunity 5 to look at the cartridge case that struck Sergeant 6 Batts in the eye?</p> <p>7 A No.</p> <p>8 Q Do you know what happened to that case?</p> <p>9 A I do not.</p> <p>10 Q All right. But you were able to examine the 11 cartridge case for both the assembled and the one 12 disassembled round that Sergeant Batts provided; is 13 that right?</p> <p>14 A Yes.</p> <p>15 Q Was -- were the diameters of lengths and 16 what-have-you of the various cartridge cases that you 17 looked at, were those consistent with the 18 measurements that you would expect to find in 300 19 Blackout round?</p> <p>20 A Yes.</p> <p>21 Q In anything that you have reviewed, inspected 22 or evaluated, have you seen any indication that the 23 ammunition that Sergeant Batts was firing on the date 24 of our incident was defective?</p> <p>25 A No.</p>
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<p>1 of our incident caused or contributed to cause his 2 rifle to open?</p> <p>3 A No. The reason his rifle opened was because 4 of low engagement between the barrel lug and the 5 latching, the latch.</p> <p>6 Q Now, we all went to -- well, came up here to 7 Oklahoma City in March of this year for Remington's 8 expert to remove the bullet that was lodged in 9 Sergeant Batts' rifle; is that right?</p> <p>10 A In the barrel, yes.</p> <p>11 Q Right. You and I both watched Mr. Watkins 12 remove that; true?</p> <p>13 A Correct.</p> <p>14 Q After that, did you have an opportunity to 15 view the bullet that was removed from the bore?</p> <p>16 A I did.</p> <p>17 Q Was there anything about that bullet or your 18 examination of that bullet that suggested that it was 19 the wrong caliber for that rifle?</p> <p>20 A No.</p> <p>21 Q Was it consistent -- did you say earlier that 22 a cartridge was disassembled --</p> <p>23 A Yes.</p> <p>24 Q -- during that meeting? All right. Was the 25 bullet that you -- that was removed from the bore</p>	<p>1 Q And any indication from any of the imaging, 2 the disassembly, the weights and measures and things 3 that you conducted, that the ammunition that Sergeant 4 Batts was firing in any way caused his rifle to open 5 on the day of our incident?</p> <p>6 A No. The fire -- the firearm opened because 7 of the low engagement between the latch and the 8 barrel lug, not because of the ammunition being 9 fired.</p> <p>10 Q All right. There has been some discussion 11 today about a squib load. Can you explain to the 12 jury what a squib load is?</p> <p>13 A A squib load is a name for a cartridge that's 14 low pressure, basically. Often squib loads may have 15 very little propellant or no propellant in them at 16 all, just the primer; and when that fires, the bullet 17 leaves the cartridge and just moves a short distance 18 down the barrel.</p> <p>19 Q And it stays in the barrel?</p> <p>20 A Stays in the barrel generally, although one 21 squib load was fired by Sergeant Batts. The bullet 22 almost came out the barrel.</p> <p>23 Q All right. You've actually seen the video of 24 that squib load; right?</p> <p>25 A Yes.</p>

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<p>1 Q And did you also watch that portion of the 2 video that showed Sergeant Batts removing that 3 projectile from the end of the bullet?</p> <p>4 A Yes.</p> <p>5 Q Or from the end of the bore, rather.</p> <p>6 A Yes, from the end of the bore.</p> <p>7 Q How did he do that?</p> <p>8 A He used a metal rod to push from the breech 9 end of the barrel, up through the barrel, to impact 10 into the bottom of the bullet and tap it out of -- 11 out of the bore.</p> <p>12 Q So in layman's terms, he put a metal rod in 13 the back end of the barrel and pushed it out the 14 front end of the barrel; is that right?</p> <p>15 A Correct.</p> <p>16 Q All right. Was there anything about that 17 process of removing that bullet from the barrel of 18 Sergeant Batts' rifle as depicted in that video that 19 I think we've seen referred to today as Recover 7, 20 was there anything about the removal of that bullet 21 that you believe would have weakened or in any way 22 adversely affected the locking mechanism on his 23 rifle?</p> <p>24 A No.</p> <p>25 Q Now, before he knocked it out with a rod, he</p>	<p>1 A Some do, yes. Some have cleaning brushes and 2 other kinds of abrasive components along the length 3 of it.</p> <p>4 Q Is that used in lieu of a cleaning rod with a 5 patch on it, the way a lot of us old-school clean 6 rifles?</p> <p>7 A Yes.</p> <p>8 Q Is there anything about Sergeant Batts' use 9 of that bore snake as depicted in that video that 10 would have in any way affected the locking mechanism 11 on his rifle?</p> <p>12 A No, sir.</p> <p>13 Q Now, you mentioned that he placed some CLP in 14 the chamber of the rifle before firing it; is that 15 right?</p> <p>16 A Yes.</p> <p>17 Q Explain to the jury what CLP is.</p> <p>18 A CLP is cleaning, lubricating and protecting 19 fluid. It's a type of oil utilized in firearm 20 maintenance.</p> <p>21 Q All right. And it's my understanding that 22 after observing that on the video, Recover 7, that 23 you had some questions about what that CLP might have 24 done to his rifle; is that right?</p> <p>25 A Correct.</p>
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<p>1 -- I believe the video shows he took a multi-tool 2 like a pair of pliers. Do you recall that?</p> <p>3 A Uh-huh, tried to grab it, but he couldn't 4 grab it with sufficient force to get it to remove. 5 In fact, I think he actually pulled part of the 6 jacket off of the bullet.</p> <p>7 Q Was there anything about his effort to remove 8 the bullet using those pliers that would have had any 9 effect on the other end of the barrel where this 10 locking mechanism is located?</p> <p>11 A No, sir.</p> <p>12 Q After -- well, what did he do -- what did 13 Sergeant Batts do as depicted on the video after he 14 used the rod to remove the bullet from the bore?</p> <p>15 A He -- he cleaned the bore, using a bore 16 snake; and then before the next shell would be fired, 17 he added some CLP oil to the chamber and barrel.</p> <p>18 Q Okay. What's a bore snake?</p> <p>19 A A bore snake is a long tube of material that 20 people utilize to pull through a barrel of a rifle in 21 order to remove deposits within.</p> <p>22 Q Is that rigid or is it soft?</p> <p>23 A It's soft. It's flexible.</p> <p>24 Q Is it a cloth that has some sort of a 25 cleaning brush embedded in it?</p>	<p>1 Q Did you -- what did you do to investigate 2 that, if anything?</p> <p>3 A I conducted test-firings of an exemplar rifle 4 in firing it both with and without oil in the bore.</p> <p>5 Q Okay. Let's go back to the squib for just a 6 minute. Does a squib round in a rifle like a 300 7 Blackout, does that develop more pressure or less 8 pressure or the same amount of pressure in the 9 chamber as a normal, fully loaded round?</p> <p>10 A Much less.</p> <p>11 Q Can you give us some idea percentage-wise how 12 much less?</p> <p>13 A No. You would have to measure it. It 14 depends on how the squib load -- a standard chamber 15 pressure for a regularly loaded 300 Blackout 16 cartridge, around 30,000 psi, depending on the kind 17 of cartridge, but a squib load will have pressures at 18 like 5 to 10,000 psi, if that much.</p> <p>19 Q Okay. I have seen references in some of the 20 documents to S-A-A-M-I. What does that stand for?</p> <p>21 A Sporting Arms and Ammunition Manufacturers 22 Institute.</p> <p>23 Q And what is SAAMI?</p> <p>24 A It is an industry group that helps promulgate 25 standards for firearms manufacture and use.</p>

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<p>1 Q Do those SAAMI standards include chamber 2 pressures?</p> <p>3 A Yes. They help set manu -- chamber pressures 4 so manufacturers know how to design rifle strengths 5 to withstand those pressures.</p> <p>6 Q Do they set maximum chamber pressures for 7 particular calibers, for example?</p> <p>8 A Yes.</p> <p>9 Q Do you know what the maximum SAAMI chamber 10 pressure is for a 300 Blackout?</p> <p>11 A I think it's around 58,000 psi.</p> <p>12 Q All right.</p> <p>13 A I would have to look up the exact number.</p> <p>14 Q All right. So if a -- what did you tell me 15 the chamber pressure you would expect on a subsonic 16 300 Blackout would be?</p> <p>17 A When I conducted the tests without oil in the 18 barrel, they were around 30,000 psi.</p> <p>19 Q All right. So the maximum for a 300 Blackout 20 is 58,000; is that true?</p> <p>21 A Approximately. Correct.</p> <p>22 Q And what you observed from firing a standard 23 factory subsonic 300 Blackout round out of this same 24 type of rifle, you got a chamber pressure of what?</p> <p>25 A About half that. About 30,000 psi.</p>	<p>1 A In general, the rifle was placed into a test 2 stand, and it was fired both with and without oil. 3 The oil was placed into the chamber and barrel just 4 like Sergeant Batts did, through a squeeze bottle, 5 and then the rifle was fired. And utilizing a 6 pressure sensitive disk at the end of the cartridge, 7 we could measure the thrust load created by those 8 shells, as well as using a strain gage to measure the 9 pressure inside the chamber.</p> <p>10 Q Okay. What is a strain gage. Explain to the 11 jury what that is.</p> <p>12 A A strain gage is a small metal foil gage that 13 is glued to a piece of material; and when that 14 material microscopically stretches as a result of 15 force, the strain gage emits an electrical signal 16 that's detected and measured.</p> <p>17 Q It generates some sort of a numerical 18 reading?</p> <p>19 A It generates a chart and a numerical reading, 20 correct.</p> <p>21 Q Okay. And then explain to the jury about 22 those pressure-sensitive disks that you told us about 23 a minute ago.</p> <p>24 A Fuji manufactures a type of film called 25 Prescale that, upon impact, changes color. It</p>
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<p>1 Q All right. So you would expect a squib load 2 to, by extension, have a chamber pressure of less 3 than approximately half --</p> <p>4 A Oh.</p> <p>5 Q -- of this SAAMI maximum; is that right?</p> <p>6 A Much less. Just enough to move the bullet 7 down the bore.</p> <p>8 Q All right. From your observation of the 9 video, your inspection and work with both the subject 10 rifle and the exemplar rifle, do you have an opinion 11 as to whether the squib load that we see in the video 12 named "Recover 7" damaged the rifle or caused any 13 problems with the locking mechanism?</p> <p>14 A I do.</p> <p>15 Q And what is that opinion?</p> <p>16 A In my opinion, there was no damage created to 17 the rifle by the use or firing of a squib load in the 18 rifle from Round 1 by Mr. Batts.</p> <p>19 Q Okay. Then jumping back to the CLP, the oil 20 that we talked about earlier, you did some testing 21 with the exemplar rifle involving oil; is that right?</p> <p>22 A Correct.</p> <p>23 Q Can you describe real briefly for the jury 24 what your procedure or process was that you tested 25 that?</p>	<p>1 changes color and its color densities relate to the 2 amount of stress for that range of film. So in this 3 case I used a high-range film; and when the shell was 4 fired, it mashes or pushes back against the receiver, 5 the breech of the rifle, and squeezes that film and 6 creates a pattern of color that's related to the 7 amount of load that that cartridge generated.</p> <p>8 Q Okay. Is that described as thrust?</p> <p>9 A Yes, thrust load.</p> <p>10 Q All right. So if I'm understanding you 11 correctly, the pressure gage measures the outward 12 pressure as the cartridge fires, and there is some 13 minute expansion of the receiver; is that right?</p> <p>14 A Yes.</p> <p>15 Q And the pressure-sensitive disks that you 16 talked about measures the pressure of the cartridge 17 pushing back against the flat part of the rifle's 18 receiver in recoil; is that right?</p> <p>19 A Yes.</p> <p>20 Q Do you have anything in Exhibit Number 4, do 21 you have photographs in there that show the setup 22 when you did that testing?</p> <p>23 A Yes. Two photographs. Here is one that's a 24 little closer and a little easier to see.</p> <p>25 Q All right. Using that setup, did you fire</p>

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<p style="text-align: right;">Page 237</p> <p>1 the exemplar rifle?</p> <p>2 A Yes.</p> <p>3 Q And tell us about the series of shots that</p> <p>4 you fired. I understand that some used oil and some</p> <p>5 did not use oil. Would you explain the process that</p> <p>6 you went through?</p> <p>7 A Yes. Initially four shots were fired with no</p> <p>8 oil in the clean barrel, and then three series were</p> <p>9 fired. First oil was placed in the barrel, and then</p> <p>10 three different cartridges were fired without</p> <p>11 cleaning the barrel.</p> <p>12 Q All right. Did you note that there were</p> <p>13 differences in thrust and chamber pressure for the</p> <p>14 rounds that were fired using oil and not using oil?</p> <p>15 A In general, when the cartridge had oil</p> <p>16 present, the chamber pressures went up slightly, as</p> <p>17 well the thrust -- pardon me. As well as the thrust</p> <p>18 loads. And when there was no oil or after the first</p> <p>19 firing of the oil, the pressures went lower.</p> <p>20 Q All right. Now, in -- I understand that you</p> <p>21 have seen the video of Sergeant Batts that actually</p> <p>22 shows our incident; is that right?</p> <p>23 A Yes.</p> <p>24 Q In that video, did Sergeant -- before the</p> <p>25 injury-producing shot, did he fire another round out</p>	<p style="text-align: right;">Page 239</p> <p>1 pressures, chamber pressures or thrust loads, and had</p> <p>2 no effect in causing the kind of injury and</p> <p>3 unlatching that the subject rifle did on the day of</p> <p>4 Sergeant Batts' injury.</p> <p>5 Q What was the highest chamber pressure that</p> <p>6 you measured during your recent test-firing that</p> <p>7 resulted from the use of oil in the barrel?</p> <p>8 A The highest test pressure was approximately</p> <p>9 35,000 psi.</p> <p>10 Q Again, with a maximum SAAMI allowance being</p> <p>11 58,000; is that right?</p> <p>12 A Yes.</p> <p>13 Q Have you seen any indication from your</p> <p>14 imaging, examination, evaluation of the subject rifle</p> <p>15 to indicate that prior to our injury-producing shot,</p> <p>16 it had ever been fired with an overpressured shell?</p> <p>17 A No.</p> <p>18 Q And by -- can you explain to the jury what</p> <p>19 kinds of indications you would expect to see in a</p> <p>20 rifle that had been fired with a round that generated</p> <p>21 excessive pressure?</p> <p>22 A You expect to see component damage to the</p> <p>23 rifle. The rifle's trigger guard and its assembly</p> <p>24 are plastic. You expect to see damage to the</p> <p>25 plastic. You expect to see gas ejected. You expect</p>
<p style="text-align: right;">Page 238</p> <p>1 of that rifle?</p> <p>2 A Yes. After the squib load, he cleaned the</p> <p>3 rifle and he put some oil down in it and a cartridge</p> <p>4 was placed in the chamber. He closed the rifle and</p> <p>5 fired that round. He then opened it back up and took</p> <p>6 that cartridge case out, adjusted his scope because</p> <p>7 of the strike of the bullet, which is what he was</p> <p>8 doing at the range that day is adjusting his -- the</p> <p>9 rifle's scope so that it would accurately show where</p> <p>10 he was shooting the rifle.</p> <p>11 And then he loaded another cartridge; and</p> <p>12 when he fired that next cartridge, the rifle breech</p> <p>13 and barrel separated and allowed the fired cartridge</p> <p>14 case to come flying back into his face.</p> <p>15 Q So if I understand you correctly, the first</p> <p>16 shot that he fired after putting the oil into the</p> <p>17 barrel went off normally; is that true?</p> <p>18 A Yes.</p> <p>19 Q All right. As a result of your test-firing</p> <p>20 that you just told us about, did you reach an opinion</p> <p>21 about whether Sergeant Batts placing oil in the</p> <p>22 chamber or barrel, as depicted in the video Recover</p> <p>23 7, did the use of that oil contribute at all to our</p> <p>24 incident?</p> <p>25 A The oil did not allow sufficient higher</p>	<p style="text-align: right;">Page 240</p> <p>1 to see deformation of the different components.</p> <p>2 Q Okay. When you say deformation, tell me what</p> <p>3 you mean by that?</p> <p>4 A Bending and stretching and sometimes</p> <p>5 fracturing.</p> <p>6 Q If the Batts rifle had been subjected to an</p> <p>7 excess pressure load that would have involved that</p> <p>8 type of stretching, is that something that would have</p> <p>9 shown up on the imaging that was done on the rifle?</p> <p>10 A It could be. It certainly would have shown</p> <p>11 up during the component inspection.</p> <p>12 Q Now, there were x-rays done of the subject</p> <p>13 rifle; is that right?</p> <p>14 A Both x-rays and CAT scans, correct.</p> <p>15 Q Okay. Tell the jury about the CAT scans.</p> <p>16 A Again, I think we talked about it, but a CAT</p> <p>17 scan is basically the ability to use a very tightly</p> <p>18 focused x-ray and have it penetrate through the part</p> <p>19 as it's spinning. And that shadow of the part, if</p> <p>20 you will, is detected on an electronic detector, and</p> <p>21 all the different data points that are created as</p> <p>22 that objects spin are loaded into a computer program</p> <p>23 and it creates a three-dimensional radiographic image</p> <p>24 of that part that you can manipulate, rotate and</p> <p>25 measure after the inspection is completed.</p>

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<p>1 Q And that was done -- are there a lot of 2 places in the United States that do that type of CT 3 on metal?</p> <p>4 A There are beginning to be more and more, but 5 there is only four or five really good places to have 6 that done in the United States.</p> <p>7 Q And did we all: Remington's lawyers, their 8 expert, you and I, did we all go and do that in 9 November of '17?</p> <p>10 A Yes, up in Rogers, Minnesota.</p> <p>11 Q All right. And the ammunition was also 12 imaged; is that right?</p> <p>13 A Yes.</p> <p>14 Q In that same fashion?</p> <p>15 A Correct.</p> <p>16 Q So with respect to that imaging, was there 17 any irregularity with the ammunition that you saw 18 that would lead you to conclude that it was defective 19 in any way?</p> <p>20 A No. It all looked exactly as I suspected it 21 would look.</p> <p>22 Q What about the subject rifle? Did you 23 observe anything from that imaging with respect to 24 the locking mechanism that forms any part of the 25 basis for your opinions?</p>	<p>1 case, and we were going to do our rifle in the 2 afternoon. Do you remember that?</p> <p>3 A Yes.</p> <p>4 Q Did that meeting go forward on January 31st?</p> <p>5 A No.</p> <p>6 Q Why not?</p> <p>7 A It was my understanding that Mr. Watkins was 8 not feeling well, and therefore we postponed that 9 exam until later on in the year.</p> <p>10 Q Do you remember hearing that he got the flu 11 at the SHOT Show?</p> <p>12 A That's what someone told me, yes.</p> <p>13 Q Okay. So that testing that was referred to 14 in your January 2019 bill -- well, the removal of the 15 bullet, was that my idea? Something I asked you to 16 do, or was that something Remington asked for?</p> <p>17 A That was something Remington asked to do.</p> <p>18 Q So that billing entry for testing and our 19 phone calls about that testing, that was related to 20 Remington's request for access to the rifle so that 21 their expert could remove the bullet; true?</p> <p>22 A Correct.</p> <p>23 Q That was not any other testing or evaluation 24 of the rifle that I had asked you to do, was it?</p> <p>25 A No.</p>
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<p>1 A You -- you examined the CAT scans for the 2 locking engagement. You saw that it was low, lower 3 than required by Remington. You also looked around 4 to see if any component showed damage from 5 high-pressure use, and there was none.</p> <p>6 Q You were asked earlier in your deposition 7 about some of your bills that you sent to my law 8 firm. Do you remember that?</p> <p>9 A I do.</p> <p>10 Q And you were questioned about a bill from 11 January of this year about a meeting for some 12 testing. Do you remember that?</p> <p>13 A I do.</p> <p>14 Q Do you recall that in January of this year, 15 we were scheduled to come up to Norman, you and I, a 16 Remington lawyer and Remington's expert Derek 17 Watkins, to perform the bullet removal that we talked 18 about earlier?</p> <p>19 A Yes.</p> <p>20 Q And by that, I mean the removal of the bullet 21 from the bore of the subject rifle. Do you remember 22 that?</p> <p>23 A Correct, like we talked about earlier.</p> <p>24 Q And you and Mr. Watkins I think were going to 25 meet in the morning to look at a rifle on another</p>	<p>1 Q Now, you were asked earlier a number of times 2 about other potential tests that might be done and 3 specifically asked about whether you, using the 4 exemplar rifle or some other rifle, whether you had 5 done testing with a Handi-Rifle and 300 Blackout that 6 was set up to have a engagement surface that was the 7 same as what you've observed in Sergeant Batts' 8 rifle. Do you remember that line of questioning?</p> <p>9 A In general, yes.</p> <p>10 Q Okay.</p> <p>11 VIDEOGRAPHER: 10 minutes.</p> <p>12 Q (By Mr. Meador) Why -- what problems would 13 you perceive in trying to set up that test with a 14 rifle that had a barrel engagement of 61/thousandths 15 of an inch?</p> <p>16 A We talked some of that during my deposition. 17 I don't need to do any further testing to support my 18 opinions in this case. I feel like I've got adequate 19 testing and evaluation and examination in order to 20 form the opinions that I have.</p> <p>21 The problems in trying to replicate a 22 particular instance is trying to get all of the 23 components to be formed and having the same positions 24 that were present at the time of the particular 25 accident and injury.</p>

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<p style="text-align: right;">Page 245</p> <p>1 So you've got to have the same kind of 2 particles between that. You've got to have the same 3 engagement length. You've got to have a lot of 4 different things that are the same in order to say 5 you've accurately replicated a particular incident. 6 Also, when you're going to be creating 7 something that's going to open a chamber under 8 pressure, you're looking at something that's very 9 dangerous. Particles flying around. And in this 10 case, obviously a cartridge case coming out. So it's 11 a very difficult and dangerous test to do and not 12 necessary in my opinion.</p> <p>13 Q Earlier you were asked about the brass 14 markings on the breech face of the subject rifle. Do 15 you remember that?</p> <p>16 A Yes.</p> <p>17 Q And the breech face is the part behind the 18 barrel that the firing pin comes out of; is that 19 right?</p> <p>20 A Yes.</p> <p>21 Q All right. So Mr. Danekas was talking with 22 you about some vertical brass marking on there. Do 23 you remember that?</p> <p>24 A Yes.</p> <p>25 Q Do you have any theories on why there would</p>	<p style="text-align: right;">Page 247</p> <p>1 ammunition was defective?</p> <p>2 A No.</p> <p>3 Q Did the fact that there was blackening on 4 that copper-jacketed bullet, did that suggest 5 anything to you? Did it have any significance in 6 forming your opinions?</p> <p>7 A Well, based on my testing, it suggested to me 8 that it was fired in a bore that had residual carbon 9 in it from firing it with oil in it.</p> <p>10 MR. MEADOR: I think I'm going to reserve the 11 rest of mine until the time of trial.</p> <p>12 MR. DANEKAS: Okay. I just have a few 13 follow-ups to your testimony.</p> <p>14 VIDEOGRAPHER: There is six minutes.</p> <p>15 MR. DANEKAS: Let's change so I don't get 16 interrupted.</p> <p>17 VIDEOGRAPHER: Sounds good to me.</p> <p>18 MR. DANEKAS: It's probably going to be 10.</p> <p>19 VIDEOGRAPHER: Off the record at 5:42.</p> <p>20 (Recess held)</p> <p>21 VIDEOGRAPHER: We're back on the record at 22 5:47.</p> <p>23 REDIRECT EXAMINATION</p> <p>24 BY MR. DANEKAS:</p> <p>25 Q Mr. Powell, I just have a few more questions</p>
<p style="text-align: right;">Page 246</p> <p>1 have been vertical markings on there?</p> <p>2 A Well, obviously the barrel rotates that 3 upward; and if there is gas, with brass particles 4 coming out, you're going to see particles in a 5 longitudinal stripe up the breech place [sic] as you 6 see it, but I haven't done any further testing to 7 determine exactly why that's occurred that way, but 8 that would be my...</p> <p>9 Q Okay. Did anything about those brass 10 remnants on the breech face in any way suggest to you 11 that there was an issue with the ammunition --</p> <p>12 A No.</p> <p>13 Q -- that Sergeant Batts was firing on the date 14 of the incident?</p> <p>15 A No.</p> <p>16 Q You were asked some questions earlier about 17 some black markings on the bullet that was removed 18 from the bore of the subject rifle. Do you remember 19 that?</p> <p>20 A I do.</p> <p>21 Q There was a reference to it being carbon. 22 You talked about oil. Was there anything about the 23 black markings on the bullet that was removed from 24 Sergeant Batts' rifle, from the injury-producing 25 shot, that would lead you to the conclusion that that</p>	<p style="text-align: right;">Page 248</p> <p>1 on Mr. Meador's exam. He ended with asking you -- or 2 toward the end of your exam, he was asking you about 3 potential further testing, and one of the things I 4 think you said was that in trying to replicate the 5 incident, you could not get all of the circumstances, 6 the conditions exactly as they were at the time of 7 the actual incident. Is that a fair statement?</p> <p>8 A It's very difficult to do, correct.</p> <p>9 Q Okay. Is that ever possible to do, to get 10 the conditions in a test identical to the conditions 11 at the time of the incident?</p> <p>12 A Well, you have to if you're going to do a 13 replica of that particular event.</p> <p>14 Q You have to get them identical?</p> <p>15 A Otherwise it's not the same.</p> <p>16 Q Okay. Is the -- the engagement of the 17 subject rifle, Mr. Batts' rifle that we talked about 18 at length and that you've looked at and photographed, 19 measured and so forth, in your opinion is that 20 engagement between the barrel catch and the barrel 21 lug the same as it was at the time of the incident?</p> <p>22 A We talked about that, because it's going to 23 change slightly every time you open and close the 24 rifle. We can only show you what it measured when we 25 saw it, and the markings on the barrel lug showed</p>

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<p style="text-align: right;">Page 249</p> <p>1 that it never got significantly more than that. 2 Certainly it never got to where what we'll call the 3 "go" position. 4 Q We looked at the one photograph where I think 5 you had something in the 70-some/thousandths of an 6 inch engagement between the surface. Do you remember 7 that photograph?</p> <p>8 A I do.</p> <p>9 QOkay. So is it your position that you see no 10 benefit at all of conducting any test-firing of the 11 subject rifle?</p> <p>12 A Not at this time. I mean, my opinions are 13 based on the examination and the physical evidence.</p> <p>14 Q If we were to ask Mr. Meador for an 15 opportunity to test-fire the exemplar rifle, do you 16 have any concerns about what that would do to the 17 subject rifle?</p> <p>18 A Sure. As I told you, it's going to alter it, 19 and I would have to talk to Mr. Meador before I would 20 say I think that's a good thing to do.</p> <p>21 Q How would it alter it?</p> <p>22 A Because the engagement would probably slip 23 again and will damage those surfaces.</p> <p>24 QOkay. Now, those surfaces, you have 25 memorialized with many photographs; is that correct?</p>	<p style="text-align: right;">Page 251</p> <p>1 with Bates number 79. 2 A Yes. 3 Q And I believe you said these invoices brought 4 you up to -- were current as of through March of this 5 year? 6 A Yes. 7 Q And then the time since March has been an 8 additional, you estimated, about 20 hours? 9 A Correct. 10 Q So your invoices -- and I'm just going to go 11 through these page by page. Your first invoice at 12 page 79 was for \$1,450?</p> <p>13 A Yes. 14 Q The next one was 562.50? 15 A Hang on. I haven't caught up with you yet. 16 QOkay. 17 A Correct. 18 Q The next one was for a thousand? 19 A Yes. 20 Q The next one was \$1,452.30? 21 A Correct. 22 Q Another one was for \$800? 23 A Yes. 24 Q Another for \$200? 25 A Yes.</p>
<p style="text-align: right;">Page 250</p> <p>1 A That's correct. 2 Q You could -- I think we established earlier 3 that if you wanted to conduct additional testing to 4 try to replicate the incident, it could be conducted 5 safely? 6 A I don't know. I -- I can't conduct it safely 7 as we do it now, but perhaps it can be, but I don't 8 know. 9 Q SAAMI does not specify the muzzle velocity 10 for a 300 Blackout subsonic round, does it? 11 A I'm sorry. Could you ask that question 12 again? 13 Q SAAMI does not specify the muzzle velocity 14 for a 300 Blackout subsonic round; is that correct? 15 A No. They don't specify. They specify just 16 for a 300 Blackout, period. 17 Q Mr. Meador was asking you earlier about your 18 you compensation in the case. You are billing out at 19 \$350 an hour? 20 A \$200 per hour for this case, but it's been 21 \$350 since the first of the year. 22 Q Okay. You are correct. We looked at Exhibit 23 8. Do you have Exhibit 8 there handy? 24 A Yes. 25 Q And we looked at your invoices that started</p>	<p style="text-align: right;">Page 252</p> <p>1 Q The next one is for \$350? 2 A Correct. 3 Q The next one is for \$350? 4 A Correct. 5 Q The next one is for \$5,567.84? 6 A Correct. 7 Q The next one is for \$700? 8 A Yes. 9 Q The next one is for \$244.48? 10 A Correct. 11 Q The next one is for \$150? 12 A Correct. 13 Q And the last one is for \$10,537.50? 14 A Correct. 15 Q Okay. Now, in fairness, some of those 16 charges were for reimbursement for supplies and 17 expenses such as your purchase of the exemplar rifle. 18 A Correct. 19 Q Okay. And those are all set forth as to what 20 were your services and what were charges for 21 reimbursement for expenses; is that correct? 22 A Yes. 23 Q And so for approximately 20 hours since then, 24 that would be another \$7,000 or so; correct? 25 A Approximately, correct.</p>

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<p>1 Q Okay. Now, you have produced in other 2 litigation in this case -- I have marked as Exhibit 3 <u>10</u>. You previously produced for us the amounts of -- 4 the amounts that had been paid to you or your 5 company, SSEC, in matters involving Remington and -- 6 matters involving Remington Arms; correct?</p> <p>7 A Yes.</p> <p>8 Q And <u>Exhibit 10</u> shows the amounts for years 9 2012 through 2018; is that correct?</p> <p>10 A Yes.</p> <p>11 Q And those numbers are accurate?</p> <p>12 A Yes.</p> <p>13 Q Okay. So for -- and I'm just going to round 14 to the nearest thousand. For 2012, for services 15 alone was \$34,000?</p> <p>16 A Wait. Do you want me to approve? Yes. Yes.</p> <p>17 Q Yes. I'm rounding to the nearest thousand.</p> <p>18 A That's fine.</p> <p>19 Q For 2013, it was \$67,000?</p> <p>20 A Yes.</p> <p>21 Q For 2014, 13,000?</p> <p>22 A Yes.</p> <p>23 Q For 2015, 9,000?</p> <p>24 A Yes.</p> <p>25 Q For 2016, 56,000?</p>	<p>1 concluded. Off the record at 5:55. 2 (Deposition recessed; signature requested) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
Page 254	Page 256
<p>1 A Yes.</p> <p>2 Q For 2017, 25,000?</p> <p>3 A Correct.</p> <p>4 Q For 2018, 23,000?</p> <p>5 A Correct.</p> <p>6 Q Now, you also produced and provided to us 7 recently a similar document for the year 2019, and 8 we've marked it as <u>Exhibit 11</u>, and I believe this is 9 -- this document is about two months old because I 10 think that's when it was produced to us prior to your 11 -- in preparation for your prior deposition.</p> <p>12 According to this document, in 2019 you were at 13 \$36,000 for services involving Remington matters for 14 2019; correct?</p> <p>15 A Correct.</p> <p>16 Q Do you have any estimate as to how much has 17 been added to that amount in the last couple of 18 months?</p> <p>19 A None billed, but probably time spent, the 20 hours spent on this case, and perhaps a few hours, 21 less than 10, spent on two other Remington cases.</p> <p>22 MR. DANEKAS: Mitch, do we anything? Derek? 23 I think that's all I have. Thank you.</p> <p>24 THE WITNESS: You're welcome.</p> <p>25 VIDEOGRAPHER: Any other cross? Deposition</p>	<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">J U R A T</p> <p>I, CHARLES WAYNE POWELL, do hereby state under oath that I have read the above and foregoing deposition in its entirety and that the same is a full, true and correct transcription of my testimony so given at said time and place.</p> <p>_____ with Corrections. _____ No Corrections.</p> <p>CHARLES WAYNE POWELL</p> <p style="text-align: center;">* * * * *</p> <p>Subscribed and sworn to before me, the undersigned Notary Public in and for the State of Oklahoma by said witness, CHARLES WAYNE POWELL, on this _____ day of _____, 20____.</p> <p>NOTARY PUBLIC, STATE OF OKLAHOMA</p> <p>My Commission Expires: _____</p>

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1 E R R A T A S H E E T

2 WITNESS: CHARLES WAYNE POWELL

3 CASE NO.: WA:17-CV-00346-RP

4 REPORTER: Theresa A. White, CSR, RPR, RMR, CRR
DATE TAKEN: JUNE 19, 2019

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1 C E R T I F I C A T E
2 STATE OF OKLAHOMA }
3 COUNTY OF OKLAHOMA } SS:
4 I, Theresa A. White, CSR, RPR, RMR, CRR, do
5 hereby certify that on June 19, 2019, beginning at
6 10:06 a.m. at the offices of Legalese Reporting
7 Services, 228 Robert S. Kerr Avenue, Suite 840,
8 Oklahoma City, Oklahoma, there came before me CHARLES
9 WAYNE POWELL who was duly sworn to testify the truth,
10 the whole truth, and nothing but the truth; and that
11 the foregoing 257 pages constitute a full, true, and
12 correct transcript of the deposition of said witness
13 on the date as indicated.
14 I do further certify that I am not counsel,
15 attorney, or relative of either party, or otherwise
16 interested in the event of this suit.
17 IN WITNESS WHEREOF, I have hereunto set my
18 hand and affixed my seal at my office in Oklahoma
19 City, Oklahoma County, Oklahoma, this 24th day of
20 June, 2019. ^

Theresa A. White, CSR, RPR, RMR, CRR
CSR No. 402
My Commission Expires: 12/31/19

405-236-8426* www.LegaleseReporting.com

Charles Wayne Powell - June 19, 2019

258

C E R T I F I C A T E

2 STATE OF OKLAHOMA)
3 COUNTY OF OKLAHOMA) SS:

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19 City, Oklahoma County, Oklahoma, this 24th day of
20 June, 2019.

Teresa A. White

Theresa A. White, CSR, RPR, RMR, CRR
CSR No. 402
My Commission Expires: 12/31/19